

1 STATE OF NEW YORK : NASSAU COUNTY
2 SUPREME COURT : PART 33

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 - against - : IND: 1910N-05

5 MARTIN HEIDGEN, SENTENCE

6 : NYSID: 5195576K

7 Defendant.

8 February 28, 2007
262 old country Road
Mineola, New York

10 Before:

11 THE HONORABLE ALAN L. HONOROF,
12 Acting Supreme Court Justice.

13 For the People:

14
15 HON. KATHLEEN RICE
16 District Attorney - Nassau County
17 BY: MAUREEN MCCORMICK, ESQ.
Assistant District Attorney

18 For the Defendant:

19
20 STEPHEN LAMAGNA, ESQ.
21 GREGORY MARTELLO, ESQ.
22 666 old Country Road
23 Garden City, New York 11530

24
25 BUFF BRANSON, RPR
Senior Court Reporter

People v. Heidgen

1 THE CLERK: The following case is on for
2 sentence, the People of the State of New York against
3 Martin Robert Heidgen under Indictment 1910N of 2005.

4 Sir, you are Martin Heidgen?

5 THE DEFENDANT: I am.

6 THE CLERK: Appearances for the defendant,
7 please?

8 MR. LAMAGNA: Stephen LaMagna, 666 old
9 Country Road, Garden City, New York.

10 THE CLERK: Appearances for the People?

11 MR. HAYDEN: Robert T. Hayden and Maureen
12 McCormick, your Honor.

13 THE COURT: Thank you.

14 THE CLERK: Do the People wish to be heard
15 before sentence is imposed, and do they have any
16 victim impact statements?

17 MS. MCCORMICK: Yes, your Honor, the People
18 do wish to be heard, and the Court and defense
19 counsel have been apprised there are eight members of
20 the victim's family who request to speak before your
21 Honor this morning.

22 THE COURT: Application is granted.

23 MS. MCCORMICK: May I begin, Judge?

24 THE COURT: Yes.

25 MS. MCCORMICK: Your Honor, on July 2nd,

People v. Heidgen

1 2005, the defendant, a 24-year-old man, engaged in
2 drinking alcohol. No crime in that, Judge. He was
3 in Manhattan. He went to a place called the House of
 Blues and he started drinking with friends.

 The problem began with Mr. Heidgen's choice
6 not to stop, not to stop for a period of almost nine
7 hours. He stayed at the House of Blues, and how much
8 he had to drink is the subject of some questions. He
9 returned to Nassau county, and he continued drinking
10 until nearly two o'clock in the morning.

11 It's unknown exactly when he left the party
12 on Sandra Lane where he had continued his drinking,
13 but he did leave, and he had been drinking at that
14 party. He had been drinking so much, in fact, your
15 Honor, that in spite of metabolism over nine hours,
16 at the time his blood was tested after this crash, he
17 still had in his system a .28 blood alcohol
18 concentration, .28, three and a half times what is
19 the established legal limit for driving while
20 intoxicated.

21 There was extensive toxicology testimony in
22 this case that revealed that that .28 was in the area
23 of the defendant still having, still having in his
24 system, 14 drinks.

25 But that's not what makes this crime the

People v. Heidgen

1 crime of murder, the crime of murder for which he was
2 charged, the crime of murder for which he was
3 convicted by a jury, who, in spite of allegations of,
4 after the fact, through the interviews conducted by
5 this office, we learned tried desperately to follow
6 the court's instruction and were diligent in their
7 obligations as citizens, an obligation that should be
honored.

9 It was clear from the jury's deliberation.
10 It was clear from the notes that they sent that they
11 had immediately gone to the heart of the matter, what
12 was the defendant's state of mind.

13 His state of mind can only be elicited by
14 the facts in this case, Judge, and while I mean no
15 disrespect ever to the people that I serve, I say
16 that this is not a DWI death. That's not what this
17 case is.

18 This is a case of depravity, and depravity
19 is something different, something more. The law has
20 made that distinction. This defendant's depravity
21 can be seen through his actions.

22 He had the opportunity to stay where he was.
23 He was welcome to stay in the home where he was
24 drinking, and having consumed enough alcohol to be a
25 .28, he chose, instead, to get in his car and drive

People v. Heidgen

1 4,375 pounds of steel uncontrolled, in his
2 estimation, although appearing very controlled, down
3 Nassau County streets.

4 Your Honor, I direct the court to the
5 probation report with respect to this one fact alone
6 where the defendant himself states -- he admitted,
7 however, that part of not staying at the house that
8 he was at was that he did not want to stay there and
9 have to sleep on the floor. He wanted to sleep in
10 his own bed.

11 His claimed rationale, his claimed reason
12 for endangering the lives of everyone who came across
13 his path, and taking the lives of Katie Flynn and
14 Stan Rabinowitz, of destroying the lives of their
15 community, their family, their extended family, is
16 because he wanted to sleep in his own bed after he
17 consumed enough to be a .28.

18 Again, Judge, it's not what makes it the
19 murder per se, because the question is what was going
20 on in the defendant's mind, as per Feingold.

21 .This defendant managed to control, in a
22 deliberate way, operate his motor vehicle without
23 incident for five miles, from the point on Sandra
24 Lane to the point at the Meadowbrook Parkway where he
25 inexplicably, because there's been no testimony about

People v. Heidgen

1 how, he became turned around and going the wrong way.

2 But we do know from the series of witnesses
3 beginning with Elizabeth serwin, Joseph Caruso,
4 Mr. weber, Matthew Sussingham, that over a period of
5 at least 2.9 miles, 2.9 miles, this defendant
6 proceeded in the left lane of the southbound
7 Meadowbrook Parkway going north.

8 He proceeded at highway speeds estimated to
9 be between 60 and 70 miles per hour. He was
10 unwavering. His operation of that motor vehicle was
11 controlled. It was deliberate. He didn't just
12 simply miss a turn and slide off the road because his
13 ability to operate had been substantially affected by
14 alcohol. He maintained that road. He maintained
15 that speed. There was an air of deliberation and of
16 controlling every action this defendant took.

17 still, having been faced with any number of
18 warnings that he was going the wrong way, that he was
19 being passed by oncoming headlights, people honking
20 at him, people blinking their lights at him, people
21 veering suddenly out of the way to avoid being killed
22 themselves, still he continued in that deliberate,
23 controlled operation of his motor vehicle.

24 Thirteen thousand feet, more than that,
25 Doctor closson testified about the effects of alcohol

People v. Heidgen

1 on perception reaction time, and that the most it
2 could be extended to was the outrageous time of five
seconds.

4 This defendant had multiple times, he had
5 every opportunity to proceed to react, to stop, to
6 slow, to get out of the way, and he never took them.

7 That is what makes this case depraved
8 indifference to human life, because, fudge, there are
9 facts about this case and the way they align with the
10 law that need to be discussed. But before we get to
11 those facts, I would like to talk about the defendant
12 himself and what we know of the defendant himself.

13 The court has had access to hundreds of
14 hours of telephone calls from the defendant to any
15 number of parties from the jail. The People have not
16 heard them, but the People wish, nonetheless, that
17 the court consider the content of those
18 conversations, the attitude of the defendant, and
19 what we believe has to be a continued lack of remorse
20 because there has been no remorse expressed in this
21 courtroom or out of it.

22 The People have sent to the court sentencing
23 letters with letters attached, unguarded letters to
24 friends. we ask the court to consider them. we ask
25 the court to consider the fact that when asked by a

People v. Heidgen

1 friend if he would drink again, he said, yes, but he
might not drive though.

2
3 Nowhere in the letters that were provided to
4 the court **IS** there any remorse expressed or concern
5 for the victims. I think it is fair to state that it
6 is all about the defendant from the defendant.

7 The defendant expresses himself as a victim
8 in this case. He continually blames other people.
9 Tracy sodikoff, his friend, is going to be the reason
10 he has to go to jail, not his own behavior, not the
11 choices he made, not the deliberate way he acted.
12 she's going to be responsible.

13 The victims' families don't like him because
14 they are being lied to by the prosecution. The
15 police are lying. They are conspiring against him.
16 He is the victim in his own mind, but he is only the
17 victim in his own mind, because, in reality, he is
18 nothing, nothing of a victim. He is purely and
19 absolutely the offender.

20 This man who, after this crash, can be
21 questioned and comes up with movie quotes, who is
22 devising a scheme of lies, who claims in his letters
23 to his friend Josh zigman, which was part of this
24 trial, that he knew we couldn't use -- we couldn't
25 use those statements against him because he claimed

People v. Heidgen

1 he had never received his Miranda warnings.

2 That begins a pattern of behavior of
3 believing he can out smart this system, that he's
4 better than this system that. was betrayed throughout
5 the course of this trial. This defendant sat in this
6 courtroom emotionless. Never did he express the
7 slightest sign of remorse, even as he listened to
8 devastated family member after devastated family
9 member describing scenes that no one should ever have
10 to view or hold in their hearts as they will for the
11 rest of their lives.

12 No, Judge, this man, after causing this
13 crash, was in the hospital being questioned by
14 Investigator Harris, and he said, I thought I was
15 talking myself out of a DWI. He's protecting
16 himself. He thinks he is going to protect his
17 friends from whatever repercussions, but he's not
18 claiming to know that he has seriously injured or
19 killed people in another car.

20 As I said during summation, and I will say
21 again, protect them from what? Protect them from his
22 own crash, if he had not seriously injured or killed
23 people? I submit to this Court that the series of
24 statements by this defendant back and forth render
25 him incredible.

People v. Heidgen

1 He claims in letters to friends that he
2 blacked out while driving, and, yet, in his probation
3 report, there are very clear and vivid imagines that
4 he recalls about operating his motor vehicle that
5 night. He suddenly remembers, Judge, that he
6 believes he tried to slow down just before the crash,
7 because that's just as the alcohol hit him, that .28.
8 suddenly things got very wrong.

9 Now, for the first time, he recalls a car
10 passing him on the right and thought it was strange,
11 but none of his letters say that, none of his
12 statements to the police said that. Now he says he
13 tried to slow down.

14 In that probation report, Judge, it is
15 astonishing how he focuses on himself, but along the
16 lines of his persistent behavior of trying to beat
17 this system, the court is aware of the behavior of
18 this defendant as it relates to a DNA -- court
19 ordered DNA test.

20 The only emotion ever expressed by this
21 defendant was in court the day that your Honor
22 suppressed the blood test, the blood and the blood
23 test results. That was the only time the defendant
24 was seen slightly weeping for joy.

25 But when the court ordered that the

People v. Heidgen

1 defendant submit to a DNA test, instead, this
defendant made every attempt to thwart that DNA test,
3 and testimony was provided to your Honor by
4 Mr. Buffalino from the DNA lab that instead of it
5 being a sample, there was additional, a second
6 sample, a majority sample that belonged to another
7 person who turned out to be an inmate with the
8 defendant.

9 MR. LAMAGNA: Judge, I object to that line
10 of statements for the purposes of this hearing. That
11 is not part of the record.

12 THE COURT: It was not part of the record,
13 but it is a part of what I am taking into
14 consideration. I am not limited to the record in my
15 determination today. overruled.

16 MS. MCCORMICK: Part of what needs to be
17 considered in that fact, Judge, is that as the
18 defendant was taken from his cell and brought down
19 for the buccal swab testing, surrounded by officers
20 to make observations and. make sure that everything
21 went well, he smugly turned to Trooper Harris and
22 said, I'm watching you guys.

23 The clear implication is that he was trying
24 to beat them again, first by believing that he could
25 get around the statement by his claim that Miranda

-People v. Heidgen

1 wasn't given to him, and, now, again, by thwarting
2 the test.

3 Your Honor, in the defendant's probation
4 report it has to be noted that the defendant feels
5 that he has -- the way he has been portrayed in the
6 media is hurtful. His concern, again, goes to
7 himself.

8 There are other items that must be
9 considered by this court in terms of the defendant's
10 character. while it is true and it is reported in
11 the defendant's probation report that he had been
12 stopped for suspicion of driving while intoxicated
13 and was acquitted, he was found not guilty in a bench
14 trial, the police report relating to that incident
15 indicates that he had the smell of alcoholic
16 beverage --

17 MR. LAMAGNA: objection, your Honor.

18 THE COURT: Sustained.

19 MS. MCCORMICK: Your Honor, the defendant on
20 a prior occasion was given the opportunity to take a
21 breath test and refused that opportunity resulting in
22 the suspension of his license --

23 MR. LAMAGNA: Objection.

24 MS. MCCORMICK: -- in Arkansas.

25 THE COURT: Overruled.

People v. Heidgen

1 MS. McCORMICK: The defendant, in saying
2 that he is offended by the portrayal of him in the
3 media states: They don't know me. Heidgen stated
4 that his character is immutable and maintained that
5 one foolish or reckless or negligent act doesn't
6 define me.

7 He concludes his statement, unbelievably,
8 with a statement that somehow, he hopes that somehow
9 he can live with the fact he is responsible for the
10 death of these two people, which he finally mentions,
11 and he says that somehow, his final words, I can
12 smile again like I used to.

13 Your Honor, he has robbed the smiles, he has
14 robbed the life, not just of the two people he
15 killed, but of countless others who are affected by
16 their deaths, and still his final thoughts are that
17 he be able to smile again.

18 There is a distinction in the law, your
19 Honor, between a person who is depraved and a person
20 who is reckless or -- I hesitate to say the words
21 simply reckless because I always worry that that will
22 somehow minimize to the victims of reckless criminals
23 the acts of their crimes.

24 This defendant starts with being reckless,
25 but he elevates his own activity to depravity. There

People v. Heidgen

1 is a distinction in the same way between the words
2 accident, which were used frequently throughout this
3 trial, and a preventable crime.

4 The word accident could consume anything
5 from a child knocking over a glass of milk to
6 something as horrific as this where the results,
7 though unintended,. were absolutely avoidable and
8 preventable.

9 There is a distinction in the law, Judge,
10 between the definition of intoxication provided by
11 People v. Cruz which says that the driver has
12 voluntarily consumed alcohol to the extent that he is
13 incapable of employing the physical and mental
14 ability he is expected to possess in order to operate
15 a vehicle as a reasonable and prudent driver.

16 A reasonable and prudent driver is something
17 substantially different than a person who has
18 intentionally blinded themselves, who has effectively
19 put a blindfold on and chosen to get behind the wheel
20 of a four thousand pound missile through our streets.

21 There are only two ways to interpret the
22 facts before your Honor. This defendant was aware of
23 where he was. This defendant, in the state that he
24 was in, for the evidence that your Honor heard about
25 the condition of his life, and the fact that he left

People v. Heidgen

1 that party without saying good-bye to anyone, found
2 himself, whether intentionally or otherwise, going
3 the wrong way and simply said, tough, I'm going for
4 it.

5 Everything about his behavior indicates that
6 he was operating that car in a deliberate and
7 controlled manner, and if that's what he did, and
8 only he knows what he did, if that's what his mind
9 set was at that moment, that can be considered
10 nothing but depraved, and I would submit everything
11 about these facts and the way he operated that car
12 says that's exactly what he did. He was one exit
13 away from the one he had to take to get home, and he
14 was just going for it.

15 But, fudge, for argument's sake, if this
16 defendant had actually, as claimed originally in the
17 black-out contention, if he rendered himself, not
18 substantially affected in his ability to operate a
19 motor vehicle, but blind, selectivity blind -- and it
20 has to be selectivity blind because he manages to
21 maintain the curves of the roadway, maintained his
22 speed. He doesn't slide off. If he has truly
23 blinded himself with alcohol, if he has truly
24 rendered himself oblivious, he could not have
25 maintained this road the way he did.

People v. Heidgen

1 But, if he had, if that's the contention,
2 blinding yourself, not drinking to the point of
3 intoxication, not being .09 or a ten, and not taking
4 the turn properly, turning wide, maybe striking
5 another car, if you have rendered yourself in a
6 position that you can actually travel three miles the
7 wrong way and not be aware of it, and you,
8 nonetheless, got in your car and tried to drive home,
9 that too is an utter disregard for human life. It is
10 depraved.

11 The jury, in its wisdom, found so. The
12 jury, in its wisdom considered, all of these facts
13 for five days.

14 This is a result oriented crime, Judge.
15 Because the defendant did not target particular
16 victims, the randomness of his victims is one of the
17 things that plays into how he should be sentenced.
18 when he put into motion these depraved -- the
19 depraved mind and the acts that resulted in these
20 horrific deaths and injuries, he had no idea how many
21 people could suffer as a result of his behavior.

22 The very breadth of the risk that he took is
23 something that has to be considered by this Court,
24 because the fact of the matter is that had the
25 defendant been able to have been stopped prior to the

People v. Heidgen

1 crash occurring, these same actions committed by the
2 defendant would have resulted in a charge of reckless
3 endangerment.

4 It is the fact that he killed these people
5 that elevates this case to murder. It is the result
6 that not only changes the charge, but the results
7 themselves must be considered in effecting a fair
8 sentence for this defendant, and his results are
9 unspeakable.

10 His results caused a mother to hold her
11 child's head in her hands. His results caused the
12 death of Stanley Rabinowitz.

13 The irony in this should not be lost on
14 anyone. Stanley Rabinowitz was a man who drove a
15 limousine and volunteered his time to see that drunk
16 drivers got home free of charge. Stanley Rabinowitz
17 was a man who was operating a limousine from a
18 wedding in which the Flynns and the Tagneys went from
19 the most beautiful day, the most celebratory day in
20 their lives.

21 The court has seen the photographs from that
22 day. The Court observed for itself, as did all of
23 the other jurors, that in the back of the limousine,
24 the shells that the children collected and are
25 pictured in the photographs given to the court, are

People v. Heidgen

1 still in the back of that limousine. The Court
2 observed Mr. Rabinowitz's eye glasses are still
3 embedded in the windshield of that limousine.

4 The Flynns and the Tagneys did everything
5 right. They attended a wedding. They celebrated
6 with their family. They have beautiful family
7 photographs. what should have been perfect memories
8 of a perfect day were destroyed after they acquired a
9 limousine so as not to take any risks of being tired
10 or having consumed any alcohol.

11 They were doing everything right, and this
12 defendant who did everything wrong, everything wrong,
13 stole from them the most precious things in their
14 lives, and they will never be the same. The concept
15 that time heals all wounds is a lie, and it cannot be
16 said to these families.

17 Judge, I need to point out, from the
18 probation report, the astute observations of the
19 probation officer who says that one sentence,
20 however, that any limited expressions of remorse from
21 the defendant may be more about regret for his own
22 life which is in ruins than a heart felt reflection
23 of remorse for the victims' losses.

24 The victims' losses are the results of this
25 crime. The victims' losses, and the fact that two

People v. Heidgen

1 lives were taken, three lives' physical health
2 destroyed, and countless others' emotional health.

3 Judge, it has to be pointed out that the
4 entire Flynn family were coming home from that
5 wedding down that route, down the Meadowbrook. The
6 first person who responded to that crash was the
7 victim's great uncle. He saw his brother, that young
8 child's cousin, Gracie and Katie's cousin, arrived on
9 that scene to see that family decimated after just
10 having celebrated with them.

11 This charge, because it does not specify its
12 victims, must also include an assessment of the
13 results, and, at this time, your Honor, the People
14 who can convey those results better than I will ever
15 be able to are the victims' families, and I ask them
16 to come and make their statements, but only after we
17 beg the court that justice demands, for the character
18 of this defendant, for his behavior, for his lack of
19 remorse, for the fact that he still doesn't get it,
20 for the damage he's done and the extreme nature of
21 his depravity, that this defendant be sentenced to 25
22 years to life.

23 At this time, your Honor, the People would
24 ask that Nolan Rabinowitz come up.

25 MR. N. RABINOWITZ: Thank you, your Honor,

People v. Heidgen

1 for your understanding, your patience, and your
2 attention.

3 My name is Nolan Rabinowitz. I'm Stanley
4 Rabinowitz' youngest son.

My father was 59 years --

6 THE COURT: Take your time, Mr. Rabinowitz.

7 MS. MCCORMICK: With the court's permission,
8 may I stand with the victim?

9 THE COURT: Yes.

10 MS. MCCORMICK: Thank you.

11 MR. N. RABINOWITZ: My father was 59 years
12 old when he was killed, just at the age of
13 retirement, and just a short time after getting
14 married.

15 He was taken away from me way before his
16 time. He wasn't here for me during my sudden divorce
17 this year when I really needed him. He won't be here
18 for my next wedding.

19 My future children will never have the
20 pleasure of knowing firsthand their grandfather's
21 smile or gentle ways. Now they will only know my
22 father through stories, like past presidents in
23 history books. Like tragic history-book stories,
24 they will know that he was killed on July the 2nd,
25 2005, and they will know about this trial.

People v. Heidgen

1 Another way my children will know their
grandfather is in the way in which I will raise them,
3 my father as my guide.

4 when my son is eight years old and he is
5 interested in helping me build a shed, I will teach
6 him everything I know about shed billing and give him
7 a piece of wood and a nail.

8 when my son is twelve years old, when that
9 shed project has now turned into a three-tiered deck
10 with support for a hot tub, I'll show him how and why
11 I designed it the way I did, and we'll build it side
12 by side, because I know that, if he is as interested
13 in it as I was, he will remember every detail about
14 the project down to how many post holes we dug and
15 how much concrete is used to support each post.

16 I'll be the type of father that hands my son
17 the power tools and, after a little instruction,
18 says, here, now it's your turn.

19 Every year I'll make sure to plan a family
20 vacation and expose my son to sites like the giant
21 sequoia trees in California and the alligators in the
22 Everglades.

23 when my son is thirteen years old, I'll be a
24 the father who not only agrees to but offers to take
25 my son and his friends to the roller rink every week,

People v. Heidgen

1 because maybe this Friday night will be the night
2 when he gets the opportunity to skate holding hands
3 with the cutest girl in his class.

4 I will be the father that would either
5 prefer to pick him up, no matter how late, to insure
6 that he and his friends get home safely, and driving
7 will never be an issue.

8 when my son is fifteen years old, no matter
9 how embarrassing the situation may be, I'll try to
10 understand the influences he may be under and
11 seriously ask him if protection is needed for his new
12 girlfriend.

13 I will ask him this because I love him and I
14 want to protect him and I want the best for his
15 future and not because I think he will remember this
16 conversation for the rest of his life.

17 This is the best that I can do, and because
18 of the actions of one person, two innocent peoples'
19 lives have been killed, and countless lives have been
20 horribly and unforgivably impacted. The convicted
21 individual that caused this deserves no less than the
22 maximum time away from society.

23 Your Honor, thank you very much for
24 listening and understanding.

25 THE COURT: You are welcome.

People v. Heidgen

1 MS. MCCORMICK: Your Honor, at this time the
2 mother of Mr. Rabinowitz's children, Joyce
3 Rabinowitz, would like to make a statement.

4 MRS. J. RABINOWITZ: Judge Honorof, I want
you to know that Stanley Rabinowitz was a good man.
6 I don't say those words without facts to back them
7 up. He only spoke well of someone or he didn't say
8 anything at all.

9 Stan was always there to lend a helping hand
10 to anyone, a neighbor, a stranger, a friend, his
11 sons, me.

12 Stan worked his entire life from the time he
13 was just a boy. He deserved a chance to live to a
14 ripe old age and enjoy the fruits of his labor. He
15 deserved the right he had to walk down the aisle at
16 the wedding of his son, Keith, which was last August
17 when he married Bonnie as planned.

18 He deserved the right he had to meet and
19 play with his grandchildren, to enjoy his new
20 marriage, to collect social security, and to
21 ultimately retire.

22 Some people may say what impact could Stan's
23 death have on me. After all, we were divorced for a
24 number of years. Was he a part of my life? But the
25 truth of the matter is, he has always been a part of

People v. Heidgen

1 my life. we were going steady when I was fourteen
2 years old. He was at my junior high school
3 graduation. The week before he was killed, we sat
4 together at our son's engagement party. we hugged
5 each other each time we saw one another. we cared
6 about each other. I always wanted stan to be happy,
7 whether we were married or not.

8 with Stan gone, there is a void in my sons'
9 lives that I try my best to fill, but I know I can't.
10 I am not stan. I am not their father.

11 Since losing stan, my family has cried a
12 million tears. we have had sleepless nights and we
13 have suffered beyond comprehension. I personally
14 have had anxiety problems driving on the highway, and
15 each day as I go to work, I relive stan's last
16 moments remembering the video again and again.

17 I refuse to go out in any situations where I
18 would have to drive home after midnight since that is
19 usually a time when drunk drivers are on the road. I
20 have had flair ups with skin disorders and
21 nervousness as a result of the defendant and the
22 trial that he has put us through.

23 My children comment to me that I worry about
24 everything, and I guess that has become a reality for
25 me. I have had stomach disorders, probably because I

People v. Heidgen

1 now realize that people like this defendant can be so
2 callous and show no remorse for their actions even
3 when their actions cause death.

4 Even his family members are so self-centered
5 that they care nothing for the victims here. They
6 have made statements to the press that this defendant
7 is a scape goat and a victim of a political plot
8 against him. It is just unbelievable that people can
9 be that cruel.

10 My feelings and anguish also encompass the
11 suffering of the Flynn and Tangney family. Hearing
12 the testimony at trial and the descriptions of their
13 injuries and the operations they have endured resound
14 in my head often. I cry for them and their loss of
15 that beautiful child, Katie. Many tears have been
16 shed by my family for their suffering.

17 I respectfully request that your Honor make
18 the proper and warranted decision in this matter.
19 Martin Heidgen did heinous crimes against the people
20 of this state and against my family and the Flynn and
21 Tangney family.

22 He knew exactly what he was doing. He did
23 it purposefully. He proved the kind of man he is
24 that day, as he did in court when he was ordered to
25 have a DNA test done.

People v. Heidgen

1 Your Honor advised the defendant's attorney
2 that his client came to court with dirty hands, but
3 the defendant actually showed us his dirty mouth and
4 deviousness and untrustworthiness. Martin Heidgen
5 deserves the maximum sentence of 25 years to life in
6 prison.

7 unfortunately, we cannot bring Stanley and
8 Katie back to us, but we can prevent him from doing
9 this again to others. we must protect the public
10 from this unremorseful and dangerous man. Thank you.

11 THE COURT: You are welcome.

12 MS. MCCORMICK: Your Honor, Keith Rabinowitz
13 would like to speak now, his first son.

14 I have been corrected, his second son.

15 MR. K. RABINOWITZ: Your Honor, my father
16 was a very honest and decent man. His friends loved
17 him for the person he was, not for what he had or
18 owned.

19 He was the type of person who his friends
20 and family could always count on. His opinion on any
21 matter was always held in the utmost regard by all of
22 his friends and family. He would say, if you don't
23 have anything good to say, don't say anything at all.

24 My father was only thirteen when he lost his
25 father to Parkinson disease. He quickly became the

People V. Heidgen

1 man of the house, working to help support the
2 household. He learned responsibility at a very young
3 age, and he did anything and everything he could to
4 better himself and his family.

5 He was a very sensible, wise and level
6 headed, safety minded and cautious person. when we
7 would go out on the boat, he would have everybody sit
8 still and listen to him giving the rules of the boat,
9 what to do and not to do, and made sure everyone
10 understood them. He knew it was his responsibility
11 to protect his passengers and guests, which he always
12 took very seriously. He genuinely cared about people
13 and would help anyone in need to the best of his
14 ability.

15 My father took pride in everything he did
16 and gave a hundred -- a hundred and ten percent in
17 all that he did and taught me and my brother to do
18 the same.

19 when he had a pick up to do when he was
20 driving, he took a little extra time to make sure
21 that everything went right. He would put a smile on
22 his face to make people feel good.

23 The night of the crash some of the other
24 drivers were arguing about the trip to Long Beach,
25 and it was him who came forward and who volunteered

People V. Heidgen

1 to drive, maybe not because he wanted to, but because
2 it was the right thing to do.

3 My father really was my best friend. He was
4 the first person I would call to talk to about
5 anything, good or bad, and I held his opinion in the
6 highest regard.

7 when he was married to Rita in October of
8 '04, I was honored and happy to sign his marriage
9 certificate because I knew it would make him happy,
10 and making him happy was the most important thing to
11 me.

12 when I met Bonnie, my dad was the first
13 person I called. I said, Dad, I think I met the one.
14 My father's relationship with Bonnie grew very strong
15 and they came to love and respect each other very
16 much. They got along very well, sometimes talking on
17 the phone for hours. He was always welcome over at
18 our house, and we always encouraged him to stop by
19 any time.

20 when it was time for me to propose to
21 Bonnie, my father and I planned out the surprise
22 together. I told him how honored I was that he was
23 part of the surprise, and we both felt very good
24 about that. He was very happy. I told him we wanted
25 to have kids and start our family and that one of the

People v. Heidgen

1 reasons for this was to give him grandchildren. He
2 was very excited that she would be part of our
3 family, the future for us, grandchildren, and his
4 future.

5 My father always told me to watch out for
6 the other guy and be careful on the road between
7 1:00 a.m. and the morning. My father was a guy who
8 would give someone who had been drinking too much a
9 ride home for free.

10 Martin Heidgen never showed any remorse
11 toward me or my family at any time through this trial
12 or at any time. He seems to think that he is the
13 victim in this, and he has refused to take
14 responsibility for his actions.

15 Anyone playing chicken on the wrong side of
16 the road without care of anyone's life, including
17 their own, doesn't deserve to live. I can't even
18 fathom that someone who has seen so much pain and
19 horror seems not to even care about any of the pain
20 they caused.

21 unfortunately, our state does not believe in
22 the death penalty in this case, and we are forced to
23 concur with the sentence imposed on him by you. That
24 is why I ask of you to impose the maximum sentence
25 allowable by law. Thank you.

People v. Heidgen

1 THE COURT: You are welcome.

2 MS. MCCORMICK: Your Honor, the next victim
3 to speak is Rita Rabinowitz, Stanley Rabinowitz' new
4 wife. They had not yet had their first anniversary.

5 MRS. R. RABINOWITZ: Martin Heidgen, due to
6 your selfishness and wanton lack of concern for human
7 life, you took the life of Stanley Rabinowitz and
8 Katie Flynn. Katie hadn't begun to live yet, and
9 Stan, who was so full of life, had his cut short by
10 your senseless act of murder.

11 Stan Rabinowitz was a strong man, yet gentle
12 and tender. People were drawn to him because of his
13 personality, crazy sense of humor, honesty, kindness
14 and wisdom. He was a wonderful husband, father,
15 grandfather and friend. He had a big heart and loved
16 easily.

17 He was my oasis in the desert, my bright and
18 shining star, and he taught me to love again. we
19 loved our life together and had wonderful plans for
20 the future. All that was ripped away from us by you
21 on July 2nd, 2005, in the early hours of the morning.

22 we had only been married for nine months.
23 There is a hole in my heart that will never be
24 filled. You killed my soul mate, best friend and the
25 love of my life. Stan was truly my gift.

People v. Heidgen

1 Your Honor, I respectfully request that you
2 sentence martin Heidgen to the maximum that the law
3 allows. Twenty-five years to life will never bring
4 stan back to me, but martin Heidgen will be in a
5 place where he cannot kill anyone else while driving
6 drunk or break hearts ever again. Thank you.

7 THE COURT: You are welcome.

8 MS. MCCORMICK: Your Honor, before I
9 introduce the members of the Flynn family, I will ask
10 the Court to bear in mind, in consideration of
11 sentencing, the eight-inch binder of letters and
12 petitions and photographs that have been submitted by
13 the Flynn family as well as the number of letters
14 from the Rabinowitz family and friends.

15 Your Honor, at this time, the first speaker
16 from the Flynn and Tangney families will be
17 Christopher Tangney.

18 THE COURT: Mr. Tangney, will you be able to
19 stand for this, or would you like to sit down?

20 MR. C. TANGNEY: No, I'm fine. Thank you.

21 Your Honor, thank you for this opportunity
22 to address the court.

23 Thank you, Maureen and Bob, for your
24 compassion and help on this trial.

25 My family has suffered irreparable damage

People v. Heidgen

1 inflicted by martin Heidgen. Everything that has
2 happened, Stanley's death, Katie's death, Neil's
3 injuries, henna's injuries, Denise 's injuries,
4 Gracie's injuries and my injuries, were all set in
5 motion by the choice that evil Marty made.

6
7 Martin Heidgen, like Charles Manson, has
8 lured Stevie and Greg to believe he is the victim.
9 He is not. I am. My family is. we, as a people, as
10 a society, are. We are the victims, not just my
11 family, the Rabinowitzes, but all of us. We, as a
12 people, have a right to be safe and comfortable when
13 moving about on the roadways.

14 During this trial Stevie and Greg have
15 distorted the facts and outright lied. They have
16 portrayed evil Marty as a victim. He is anything
17 but. He has lied to the police. He has lied to his
18 friends. He has lied to his family. He was caught
19 polluting court directed tests. He has tampered with
20 evidence to the degree of taking another man in his
21 mouth to foil a court ordered DNA test.

22 Stevie, in his opening statement, said that
23 Marty was innocent but should pay for his crimes. At
24 no time has the defense team come forward with a
plea. They have gone out of their way to delay,
confuse and lengthen this trial and confuse the jury.

People V. Heidgen

1 The conduct of the defense team was
2 appalling. Stevie's incessant clicking of his pen
3 while miss McCormick was on direct, his animated
4 gestures and arm waiving in the presence of the jury
5 while miss McCormick's and Mr. Hayden's backs were
6 turned, these acts were childlike and unprofessional.

7 Denise was on the stand giving testimony a
8 short time when Greg accused her of -- and the
9 charges -- of being politically motivated, inferring
10 that the charges were not warranted.

11 Greg inferred the charges were some campaign
12 agenda of Kathleen Rice when, in fact, he knew the
13 indictment and charges were at the direction of then
14 DA Denis Dillon. This was another deception.

15 My family, the Rabinowitzes, society, we all
16 deserve justice. I mean, we are the victims here.
17 we did nothing wrong.

18 Your Honor, as a judge, you look at the
19 reports, the clinical police, medical records of
20 events. You impose a sentence on the jury's verdict.
21 when you impose that sentence, you are to be
22 impartial.

23 when you look at us, you don't see or hear
24 my wife whimpering every night in her sleep from the
25 pain, and you don't see the lack of Neil's, Denise's,

People v. Heidgen

1 and my ability to move, to get dressed in the
2 morning, our limited abilities caused by evil Marty.
3 You don't see an athlete, a 37-year-old father,
4 unable to pick up his children. He can't chase after
5 them, wrestle or roughhouse with them. This is a two
6 year old, a four year old, and a six year old who
7 should not have been robbed of a father's
8 roughhousing.

9 You don't see Lisa, a newlywed, apologizing
10 to me hundreds of times over the past year for having
11 a wedding so far away. she did nothing wrong to
12 deserve this guilt. She got married.

13 You don't see Denise, Jenna and me cry every
14 day.

15 You did not see me avoid Neil for over a
16 year, not talk to him, not get caught alone in a room
17 with him, for fear I would look at him, because he
18 looked so much like Katie.

19 You don't see a family that at one time
20 spent every holiday, vacation and weekend together.
21 Now, one of us, conspicuously and purposely, stays
22 away for fear that we are moving along without Katie.

23 Your Honor, I don't know how you look at the
24 reports, the various paperwork, the verdict and
25 impose a sentence devoid of emotion, especially with

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People v. Heidgen

1 us sitting right in front of you and in your face a
2 family demanding justice. It is not only us that
3 needs justice and protection but society as well.

4 when you look at us, we are nothing special.
5 we are everybody. we are the guys in the white hats,
6 just an average family returning home from a wedding.

7 Your Honor, you must protect us from the
8 evil Martys who choose to act without regard to the
9 rules and the laws of society.

10 Evil Marty chose to drive drunk that night.
11 He knew what he was doing. He entered into a course
12 of conduct that proves he knew exactly what he was
13 doing. He specifically snuck away from his friends
14 without saying good-bye because he knew they would
15 provide a place for him to stay. He knew that his
16 condition -- that in his condition they would
17 intervene and he didn't want the hassle. He chose to
18 leave. He chose to drive and he knew his condition.

19 He chose to drive, and as he drove, he
20 decided to self-destruct. I don't know exactly when
21 he chose.-to kill. I do know it was decided around
22 2:00 a.m. on July 2nd, 2005, in the vicinity of the
23 toll plaza on the Meadowbrook Parkway, because that's
24 when an evil Marty decided to kill and kill he did.

25 His first attempt failed when he tried to

People v. Heidgen

1 crash into Elizabeth serwin forcing her to the
2 shoulder. she evaded and lived.

3 His second attempt further north on the
4 Meadowbrook Parkway, while more aggressive, also
5 failed when he tried to crash into Mr. Caruso.
6 Mr. Caruso had to veer across two lanes on to the
shoulder to avoid being killed.

8 Further north near the Babylon Turnpike, on
9 the third attempt to kill, he was successful. I am
10 the victim of that crash. I am also an eye witness.
11 I witnessed Marty track us. when he changed lanes --
12 when we changed lanes, he changed. I watched him aim
13 at us. I watched him turn into us at full speed.

14 Mr. Rabinowitz tried to evade the on coming
15 onslaught. I watched evil Marty crash into us. I
16 watched his truck climb up over the hood of the limo,
17 and I watched as Marty killed and maimed. Your
18 Honor, I watched Marty aim at us with intent and
19 purpose.

20 Your Honor, you must protect us and you must
21 extract justice for what has happened. The only
22 justice warranted for this evil, evil piece of shit,
23 is that he gets 25 years to life. I seek justice for
24 the acts of Marty Heidgen. Only the maximum is
25 dictated. Thank you.

People v. Heidgen

1 THE COURT: Before you ask your next victim
2 to speak, I am going to adjourn these proceedings for
3 about ten minutes.

4 (whereupon, a brief recess was taken.)

5 THE COURT: Miss McCormick?

6 MS. MCCORMICK: Your Honor, in listening to
7 Christopher Tangney's statement, before I bring in
8 Denise Tangney, I realized that I neglected to bring
9 something to the court's attention that I think bears
10 on this sentencing.

11 The court is aware that there had been
12 statements made by one of the defendant's friends,
13 Tracy sodikoff, that the week before this incident
14 the defendant had become intoxicated and had left the
15 party, again, without saying good-bye to anybody,
16 what she believed was an attempt to evade having his
17 keys taken, because, according to all of those
18 friends, it was their practice not to drive, to take
19 the keys and remain where they were.

20 Your Honor is aware that miss sodikoff made
21 a statement that she confronted the defendant just
22 one week earlier about never doing that again and was
23 given assurances by the defendant that it was a
24 one-time event, an anxiety attack, and that that
25 prompted belief of the proximity of that behavior.

People v. Heidgen

1 The promises elicited, the fact that he was
2 directly told that it was unacceptable and now the
3 proximity to this event is something that I think the
4 Court should bear in mind in sentencing.

5 I apologize for leaving that out initially.
6 Mr. Tangney's statement, since he referred to it, I
7 thought it needed some clarification.

8 Denise Tangney was a victim and is the
9 grandmother of Katie and she is the next speaker,
10 your Honor.

11 THE COURT: would you like to sit down.

12 MRS. D. TANGNEY: No. Thank you.

13 Judge Honorof, thank you for the opportunity
14 to address this Court.

15 THE COURT: You are welcome.

16 MRS. D. TANGNEY: I heard your admonitions
17 to the jury. You told them to be impartial. You
18 told them to stick to the evidence. You told them to
19 separate the facts from sympathetic emotion, and
20 almost as impossible as that is to do now, I'm
21 attempting to address you today from that
22 perspective.

23 I have tried to compartmentalize our deep
24 scars, our catastrophic losses of our physical and
25 spiritual and our emotional beings, our entire family

People v. Heidgen

1 unit. i have tried to put that aside for the brief
2 opportunity to speak to you and come to it from a
3 different perspective.

4 In your decision today, I ask you to
5 consider why there's--so much media here today. why?
6 why?

7 In determining the sentence for this
8 depraved human being, I ask you to consider why our
9 circumstances, our story, this case, why has it
10 touched so many across the united States, and I've
11 gotten letters from overseas. why is that?

12 In my bed for a year and a half, unable to
13 do anything but sit and read and think and pray, I
14 have pondered why you open the paper and every day
15 there's somebody's tragedy in there. why has our
16 case resonated with so many? why is that?

17 I believe it's because this depraved
18 individual violated everything that represents right
19 and good. This depraved individual violated a
20 family, our family. He violated loving,
21 interdependence, loving, mutual support, violated
22 loving, customs, joy, loving, responsibility.

23 we did everything right that night, and we
24 had every right as citizens to expect to travel on a
25 public highway and expect to tuck in four children in

People v. Heidgen

1 bed that night.

2 why are they here? why is the media here?
3 Because we are everybody. We are every man. our
4 face is everybody's face. We are every mother. we
5 are every father. we are every grandparent. we are
6 every family.

7 Interdependence, mutual support, customs,
8 joy, responsibility, doesn't that describe the tenant
9 of a healthy society? Aren't laws meant to protect
10 the very fabric of a civilized society? Isn't that
11 why we are here today? Isn't that why you and
12 everybody else that works in this building gets up in
13 the morning?

14 It's 2007 but the premises is primal to me.
15 society has rules. It has rules to protect it's
16 integrity, and, since the age of the caveman, if an
17 individual violated the integrity of the group, they
18 were shunned and they are were ostracized. why? To
19 protect the group, and living in this group and
20 reaping the benefits of this group demands
21 responsibility.

22 in this day and age, you want to abandon
23 your kids, you want to shave your head, you just go
24 to rehab. You extort money, forfeit public trust,
25 you say you are sorry and then you go to rehab.

People v. Heidgen

1 Today, your Honor, your decision has the
opportunity to tell this depraved individual, and
3 those who are like him, that this court will not
4 tolerate a laissez-faire attitude towards social
5 responsibility.

6 This pathetic, depraved individual chose to
7 live outside the boundaries of social and lawful
8 conduct. My family and the Rabinowitz' family are
the victims of that choice.

10 My comments today are addressed to you and
11 to lady justice who is blind to all the emotions and
12 everything except for the facts, and the fact is that
13 Neil, chris and I were brutally assaulted. The fact
14 is that we lost our Kate to murder.

15 In the midst of this whole time, we can't
16 lose sight that we have lost our little girl. She's
17 not a cause. she's not a social agenda. she's our
18 baby and the light of our life. she's the glue that
19 keeps our family family. she is pure joy, and we are
20 poorer for her absence.

21 Jenna and Neil will parent differently.
22 Neil will practice law differently. They will
23 interact with the world around them differently void
24 of her absence.

25 Her sister and her brother are going to grow

People V. Heidgen

1 up differently, void of her loving influence. Her
2 friends, her school, Long Beach, anyone and any
3 person that she was supposed to touch in her life are
4 poorer for her absence.

5 This depraved individual is responsible for
6 that. This depraved individual must take
7 responsibility for the way he chose to live his life.
8 This court has the responsibility to demand
9 responsibility from this person and from its
10 citizens.

11 Judge, I request the maximum sentence for
12 each count charged against him, three assaults and
13 two murders. Thank you.

14 THE COURT: You are welcome.

15 MS. McCORMICK: The next speaker is Jennifer
16 Flynn.

17 MRS. FLYNN: I loathed standing before you
18 today knowing that I am expected to sum up the impact
19 of the crash in a statement. It cannot be done, but
20 I stand before you because no one should live like I
21 do.

22 I am here for Grace, Eamon, Colm, for my
23 family, friends, neighbors and for the thousands of
24 people that have been extraordinarily kind to us. It
25 is courage that brings me here, not revenge, because

People v. Heidgen

it's the right thing to do.

2 we, as a society, have allowed drunk driving
3 to continue. Katie didn't die from cancer, cystic
4 fibrosis or some other terrible disease which compels
 us to send money to a foundation praying that
6 scientists will cure. we donate all we can afford.
7 we raise funds. we pray and hope that someone will
8 come up with a cure. Everyone agrees that these
9 scourges needs to be eradicated.

10 Drunk driving exists because we allow it to.
11 with drunk driving, you can't just write a check and
12 hope for the best. It requires us to look at how we
13 have been tolerating drunk driving with insufficient
14 jail time, inadequate charges and ridiculous
15 self-improvement classes.

16 why do we accept laws that are written *in*
17 such a way that law enforcement must prove someone's
18 state of mind? I have the blood, the confession, the
19 witnesses, the videotape and the unrepentant
-20 sociopath driver.

21 People actually said to me that if he was
22 not convicted of murder, at least he'll get
23 manslaughter and some jail time. why would I accept
24 that? why do we accept that?

25 Kate was murdered needlessly by a deliberate

People V. Heidgen

1 act. Drunk driving could be dramatically reduced
2 tomorrow if we changed our mind set and punished
3 drunk drivers. It's easy to give jail time. It's
4 easy to stick someone in a program, but it doesn't
5 work.

6 I wish that I had the opportunity to spend
7 Thursday nights in a class somewhere. I wish I had
8 the opportunity to pay a fine. I wish I could spend
9 ten years in jail. By ten years worth of calendars,
10 I would cross every day off, and, at the end, I would
11 get my life back. But my tomorrow will never get
12 better ever.

13 Drunk driving continues because people
14 aren't afraid not to. Punishments are not that big
15 of a deal. They are not severe enough because
16 society doesn't view it as the crime it should which
17 brings me to the trial.

18 why do we accept it when the New York Times
19 reports that this is a drunk driving bungle, bungle?
20 Bungle is the word they actually used. Bungle is a'
21 term you should use if you drop a bag of chips or, at
22 worst, roll through a stop sign.

23 Katie's head was severed from her body. The
24 entire front end was embedded in Stanley Rabinowitz.
25 To clean it up and water it down so it's more

People v. Heidgen

1 palatable for the papers and the news, the jury and
2 the defendant is wrong.

3 setting aside how insulting that is to Kate,
4 Mr. Rabinowitz and our family, it was a disservice to
5 drivers everywhere to not discuss the crash as it
6 actually happened. If it were not constantly watered
down, maybe we would punish drunk drivers
8 appropriately.

9 Maybe if you knew that the crash didn't end
10 on impact, if you knew how things unfolded after
11 impact, people could form an informed opinion on
12 drunk driving.

13 Two dead, three others maimed in a car
14 accident, as the defense would like to paint this,
15 doesn't even come close to describing the carnage of
16 that night.

17 The defendant has rights -- and I am a true
18 believer in the system -- but his rights don't
19 supersede mine, and if the decisions are to be made,
20 they should be based on all the facts, and it didn't
21 end on impact and it should count.

22 who cleans it up for me? who cleans it up
23 for the court officers and police officers who don't
24 even know us and are still visibly affected during
25 their testimony by the horrors of July 2nd, a year

People V. Heidgen

1 and a half later, or the EMTs and police officers
2 that were not permitted to testify because it would
3 have been prejudicial? who cleans us out of their
4 nightmares?

5 It should count for sentencing today and
6 people should know so that change might be made and
7 society's tolerance and acceptance of this crime. I
8 shouldn't be dismissed as a grieving mother. what
9 happened to me and Kate should be known and be given
10 the weight it deserves.

11 I sat with Kate on the Meadowbrook Parkway
12 and calmly and knowingly told officer Collins, the
13 officer stationed to sit with me, that my life was
14 over. There was nothing exaggerated, or dramatized in
15 that statement because he drove seventy miles an hour
16 and mowed us down with a head-on crash. I was left
17 to pick up my most beautiful, loving, first born
18 seven-year-old daughter's head off the floor of a
19 limousine, to sit on the ground holding her and
20 watching helplessly those I love in so much pain, to
21 see my father's leg cut off and his body mangled, my
22 husband moaning in pain and screaming for Kate, the
23 unnatural and scary positioning of my mother, the
24 blood and bodily remains strewn on the seats and my
25 helpless, scared five-years-old hurt daughter crying

People v. Heidgen

1 in the corner.

2 It sounds flat on paper. I hate saying it
3 out loud, but living it can't be described:

4 Driving with Kate to the hospital, crying as
5 I knew I was getting closer and closer, knowing it
6 was the end, and kissing her good-bye, having minutes
7 to get it together as I was rolled into an empty
8 corridor to wait at the opened back entrance of the
9 ER where I would meet Grace;

10 How scarey it was to see my baby on a
11 gurney, not knowing how we would make it through the
12 night or any day thereafter, saying good-bye to my
13 father as he was transferred to a hospital better
14 equipped to treat his horrendous injuries, letting
15 him know how much I loved him, how peaceful Kate
16 looked in her sleep, and how she could not have felt
17 any pain;

18 Calling Neil's mother with the devastating
19 news about Kate and having nothing to say about
20 Neil's condition, how frightening it was to be at the
21 hospital without him, how scared I was for his
22 survival physically and mentally, pleading into
23 friends' answering machines to pick up the phone so
24 they could get to south Nassau Hospital before the
25 state trooper that I was told was sent to tell him

People v. Heidgen

that his daughter was dead, all the secondhand
information I was getting about his condition and
doubting he was well enough too hear about Kate;

watching the clock minute by minute, waiting
for 7:00 a.m. so that my mother could start her first
of many surgeries, still not knowing if it was
because she wasn't stable enough to be operated on or
if the hospital was waiting for the surgical team;

At about 7:00 a.m., the hospital staff
realized that Grace was never examined, knowing that
she was bleeding internally and would need to be
watched for several days in the pediatric intensive
care unit, not knowing how much she knew and how much
we could tell her.

we spent five days together in the hospital.
As we were discharged, Grace and I sat in a wheel
chair being rolled out to the car when she saw a
newspaper with Kate's picture on the cover. I had to
tell her and the boys by myself when we got out.

we stayed with relatives for a couple of
days hoping Neil would be released and that we could
go back to my mother's house together. But it would
be three weeks before he was released and we needed
to get home..

It was two weeks before the doctors released

People v. Heidgen

my parents and my husband, transferring them to a
rehabilitation facility and permitting them to go by
ambulance to Kate's wake and funeral.

I visited three hospitals a day, comforting
my. one year old, three year old, five year old,
planned a wake and funeral mass by myself. That
should count and that should be weighed. Two dead,
others injured is an unfair incomplete depiction of
that crash.

After the mass, Neil and I went back to the
rehab facility. I had just had a funeral mass for my
perfect, spectacular child, and Neil still could not
come home with us. Because of his injuries, he slept
in a recliner while I slept in his hospital bed, the
two of us holding hands for as long as we had the
strength to keep them outstretched.

our house was being renovated by my father
and the six of us had been staying at my parent's
house. Now we had no home to go home to, no one to
go with, broken bodies and spirits. Friends,
neighbors and strangers came together like an Amish
barn raising to build us a place where could try our
best to live. we spent four months living in one
room, myself and the kids on the bed, Neil in the
recliner, and Kate in a small, small cardboard box on

People v. Heidgen

1 a shelf in the closet next to my T-shirts.

2 He spent all day crying and drinking and all
3 night staring at the television. For the first few
4 months, I never spoke in the morning because I
5 couldn't believe I had to live another day without
6 her. For the next few months, I didn't speak in the
7 evening because I couldn't believe I lived the whole
8 day without her.

My father came home four weeks after the
10 crash and my mother five and a half weeks after the
11 crash. All of us living in one home wailing from the
12 pain both mental and physical. It was helpful
13 because we needed each other and horrible because
14 it's too hard to be with people you love in that pain
15 and not be able to help each other.

16 we moved back home the weekend of Kate's
17 birthday. on what should have been Kate's eighth
18 birthday, we brought ashes to the beach, spreading
19 her in the place that once brought her so much joy.

20 The past year and a half required more
21 surgeries for all of us. The physical and mental
22 pain we lived with could not and should not be
23 referred to and cleaned up as also injured.

24 I don't want to describe what my life is
25 like, but would it make a difference if you knew how

People V. Heidgen

he ended all of our lives because he could and
because he wanted to? would it change the way we
view and punish this crime?

The papers cleaned it up. The trial cleaned
it up. I put my makeup on and I stay busy with my
children, but if you knew that I was half the person
that I used to be, would it make a difference? It
should.

I spell, count or pray to keep my mind from
going to where it's difficult to come back from. The
crash and living without her affects every TV show I
watch, every book I read, every conversation I have,
every activity I engage in and all the relationships
I have.

Food, drugs, alcohol and exercise do not
provide respite. I gasp for air as I walk through
the aisles of waldbaum's. I get so overwhelmed with
grief or gratitude when I meet the people who are so
kind to us that I can't speak. I fumble over my
words and I am reduced to tears in a second.

i try to be the best mother, wife, daughter
and friend that I am or can be, but I'm half the
woman I was. I am most happy when I'm with my
children. Yet being with them makes me want them
more. I had four kids in six years. we didn't have

People v. Heidgen

1 a chance to grow as individuals yet. we were one
2 unit, each piece making up one personality. Her
3 absence is palpable.

4 My marriage has suffered. I have loved my
5 husband since I was seventeen. But it is
6 excruciatingly difficult to be with someone in that
7 much pain and to feel the same way and not be able to
8 do anything about it.

9 I am quiet, disconnected and withdrawn.
10 There is no conversation that follows what happened
11 to us. There is no subject worth talking about, so I
12 don't.

13 My friends and family mark the loss of Katie
14 and us. we are trying. I spend time with relatives.
15 I wake up with a rash. I go to a birthday party or
16 holiday. I wake up with an infection. I sat through
17 the trial coughing and sneezing.

18 Living with the stress makes me physically
19 ill. I have suffered from infections, headaches,
20 back pain, cuts and colds that take an inordinate
21 amount of time to heal. I can't sleep. I'm
22 incredibly sad. i wonder what we are doing here, and
23 I hope that heaven is everything I want it to be.

24 we are a good, strong people, a loving
25 family with close friends living in a great community

People v. Heidgen

1 and every day is a struggle, a
2 can't-get-the-door-open air-on-my-face-fast-enough
3 struggle.

4 If people knew all of this, would it make a
5 difference in the way that we punish drunk drivers?
6 would it force a remedy for the inadequacy of the
7 current system?

8 It doesn't end with two dead, others
9 injured. It's not that neat. Although time will
10 make us more resilient as we learn to live this new
11 life, it will never be good. How we live to get
12 there should count for sentencing and be known so
13 that changes can be made.

14 Living without Kate is more difficult that I
15 can or care to convey, but the manner in which she
16 was stolen leaves my breathless. One man chose to
17 end her life.

18 The murder charges, correctly chosen because
19 it fits the crime, were submitted under Denis Dillon,
20 the previous DA. . The current DA prosecuted the case.
21 By reporting the defense's claim that this charge was
22 brought by Kathleen Rice's political motivation,
23 without adding that it was actually her predecessor
24 who brought the charge, is wrong.

25 This is not about political agendas. It is

People v. Heidgen

not about Kathleen Rice. It is about Katherine Marie Flynn. It is about Stanley Rabinowitz. The charge of depraved indifference murder was chosen because it fit the crime committed.

His reptilian attorneys misled the jury and the public with complaints that the charge was tantamount to intentional murder when he was only charged with depraved indifference murder. where is the follow-up statement that challenges him on his blatant lies? How can we ever have a necessary dialogue if the public thinks that we are crazy grieving parents and that this is a political witch hunt?

If Newsday is going to go print articles with three defense attorneys or liberal law professors who state we'll never win, where are the three retired prosecutors that counterbalance that pathetically wrong drive?

I am not saying you have to give the victims preferential treatment, but be fair. How does it serve the public if we are led to believe that this is a battle that can't be won?

our crash fits the new appellate rulings perfectly. who else would have the videotape, the number of witnesses, sympathetic victims? why are we

People v. Heidgen

1 writing the laws in such a way that it makes
2 prosecuting these cases so difficult? why do we
3 tolerate it? why is it not discussed in detail?

4 we give the media the perfect vehicle to put
5 this dialogue out there. we all drive on the same
6 roads and the focus should be on changing the system.

7 His foul, disgusting defense attorneys have
8 lied about how remorseful this murderer is. we know
9 he isn't sorry because he tried to have his blood
10 thrown out. He tried to beat the DNA test. He
11 allowed a strategy based blatantly on false distances
12 and speed. He showed not a scintilla of remorse
13 throughout the entire trial.

14 we know he isn't sorry from the letters he
15 wrote from prison. we know from the court officers
16 who took him to and from the courtroom. we know from
17 the correction officers who take him to the law
18 library where he researches his appeal. He never
19 grieves. He is not sad. He never mentions us. He
20 is only concerned with himself. The remorse would
21 not make him less guilty, but it would make him
22 human.

23 I request that he receive the maximum
24 sentence available. He drove such an incredible long
25 distance the wrong way. It's the entire length of

People V. Heidgen

1 our boardwalk. To go that far and pass all those
2 people and never break or turn when on his side of
3 the road before the overpass are wide areas of grass
4 on both sides. He aimed his truck right at us and
5 plowed into us at a crushingly high speed.

6 He stole her life. He ended ours. I
7 request that he be sentenced to 25 years to life. It
8 is not out of revenge. I take no pleasure in knowing
9 he'll be serving that length of time. I will not be
10 soliciting convicts to have him beaten weekly.

11 I almost never think of him because he's in
12 jail, and that is the way it's supposed to be. He
13 should serve 25 years to life because it is the
14 correct punishment for the crimes committed. Life is
15 worth that, Kate's life, Stanley Rabinowitz' life and
16 our lives.

17 Thank you for taking the time to read the
18 binder. I hope it was considered, and thank you for
19 fairness throughout the trial and the opportunity to
20 be heard here today.

21 THE COURT: You are welcome.

22 MS. MCCORMICK: Your Honor, Neil Flynn.

23 THE COURT: Mr. Flynn, as you know, I read
24 the letter you sent me personally. would you prefer
25 to sit down for this?

People v. Heidgen

1 MR. N. FLYNN: No, your Honor.

2 Good morning, your Honor, M. Hayden, miss
3 McCormick.

4 There are two tangential but important
5 issues I am going to deal with before the bulk of my
6 remarks.

7 The first is the reprehensible behavior of
8 the defense attorneys who were under the direction
9 and control of this defendant. while you may have
10 convinced yourselves that you were engaged in
11 ethical, even laudatory efforts to defend the rights
12 of this filthy child killer against the over charge
13 of murder, your dishonest, unethical behavior
14 throughout the proceedings belies that contention.

15 From the very outset it was clear that the
16 truth would have no influence on your presentation,
17 thus undermining whatever tenuous claim you might
18 have otherwise made to acting honorably in a
19 distasteful cause.

20 when, at the suppression hearing, you
21 produced that unethical quack to bolster your
22 unsupported allegations of police and prosecutorial
23 impropriety, it was clear that you would stoop to any
24 level to free this filthy killer from justice.

25 without any facts to support your

People V. Heidgen

1 contentions, you recklessly slandered the police and
the prosecution inventing wild claims of evidence
3 tampering, conspiracy and perjury. Your willingness
4 to slander hard working, honest people to protect the
5 interest of a filthy child killer remain consistent
6 throughout the trial and continues to date.

7 You lied repeatedly to the jury, to the
8 Court and to the public regarding the provenance of
9 the blood sample. Incredibly, you repeated these
10 lies even after that filthy killer drank another
11 criminal's juices in a desperate attempt to escape
12 justice.

13 Even after it was clear to everyone that he
14 knew the blood was his and that its contents were
15 damning, you were perfectly willing to take advantage
16 of the jury's ignorance and lie to their faces. Your
17 glib willingness to lie over and over again on behalf
18 of a filthy child killer was, unbelievably enough,
19 not the most disgusting aspect of your performance.

20 It wasn't even your habit of patting him on
21 the back or rubbing his shoulders in a feigned effort
22 to revive his spirits despite his absolute lack of
23 remorse or emotional response for the horrors he had
24 reaped, no, the absolute low point was, when
25 questioning the medical examiner about my daughter's

People v. Heidgen

1 death, you actually stood not 20 feet away from my
2 wife and I and blamed us for killing our daughter by
3 failing to put a seat belt on her, when you knew we
4 had and that your client used that very seat belt to
5 cut her head off. I knew by then that you were
6 unethical liars, but I did not know what absolute low
7 lives you really were until you blamed me for killing
8 my own daughter.

9 You continue -- you can continue to lie to
10 anyone stupid enough to listen and pretend you were
11 simply taking on an unpleasant but necessary task in
12 defending this filthy child killer, but everyone who
13 saw you lie day in and day out, and everyone who saw
14 you blame us for our daughter's death, knows that
15 there is no puss filled sink hole that you wouldn't
16 swim in in order to garner the publicity and thereby
17 the money that a successful defense would bring you.
18 say what you want, but you and I both know that you
19 are just whores.

20 As for you, you greasy little boot tucker,
21 everything I just said holds true for you as well.
22 You should feel obliged to tell every potential
23 client you were sick day they taught
24 cross-examination at law school. You are not an
25 accident reconstruction expert, are you (gesturing)?

People v. Heidgen

1 As for you, you filthy child killer, you are
2 utterly beneath me, my wife and my daughter's
3 memories, so I won't waste much time on you. I just
4 want you to know two things.

5 understand, you and I aren't through, not by
6 a damn sight. So you better make the most of your
7 time in prison because that's as good as it gets for
8 you from here on out.

9 second, nobody in this room gives a damn if
10 you are sorry, most of all because it doesn't matter.
11 Neither my family nor I would care even if you were
12 truly repentant. what you did can never be overcome.

13 But the fact is, you aren't the least. bit
14 sorry. Everyone who has paid any attention can tell
15 that you couldn't care less that you cut my little
16 girl's head off and forced my wife to hold her
17 lifeless daughter in her arms for hours.

18 So whatever empty claims of apology you plan
19 to make will fall on deaf ears. But, if you do
20 bother to beg for mercy, be advised, do not mention
21 my daughter or my family. I will not allow you to
22 use us in your filthy charade.

23 Your Honor, in that regard, I urge you to
24 disregard anything he might say out of hand, not
25 allow him to make a further mockery of these

People v. Heidgen

1 proceedings. He has done contortions to deceive this
2 Court without regard to the institution of justice or
3 the truth. Do not countenance his request for mercy
4 because he is unworthy, and do not believe his false
5 pleas of apology or sorrow.

6 In addition to this statement, I have
7 submitted a letter to Judge Honorof because I do not
8 intend to reveal the true depths of my family's
9 suffering in open court. I have made this decision,
10 not because I am embarrassed or ashamed, but simply
11 because I do not wish to give the defendant the
12 satisfaction of hearing the full extent of the pain
13 he has caused us.

14 I believe he would revel in hearing of our
15 true suffering because he is an immoral sociopath. I
16 believe this because, as the videotape clearly shows,
17 he intentionally rammed our limousine and because he
18 clearly believes himself to be the aggrieved party in
19 these proceedings.

20 His disregard for the lives of innocent
21 strangers was manifested in his behavior on that
22 night, and his disregard for the rules of decent
23 society have been manifest every day since.

24 From the outset it was clear that this was
25 not a DWI involving homicide. It was a multiple

People v. Heidgen

1 murder committed by a depraved killer who happened to
2 be drunk. when you look at the evidence, this
3 conclusion is inescapable.

4 From his concern only for his truck to his,
5 by his own admission, hideously contrived, calculated
6 statement to Investigators Harris and Baez, to his
7 self-absorbed correspondence to his friends, to his
8 constant complaints to his jailers and fellow
9 criminals, to his attempt to beat the DNA test, to
10 his absolute lack of emotional response to the most
11 compelling testimony regarding his crimes, all of
12 this clearly points to an evil, narcissistic
13 personality, not simply someone who had too much to
14 drink and made bad decisions.

15 whether you accept this premise is
16 immaterial since intent is not an issue, and, in the
17 event the results of his actions were so devastating
18 to so many people, he must receive the maximum
19 punishment available. Anything less would be an
20 affront to the memories of Katie and Stanley and to
21 our families as well as a rebuke to society in
22 general which has finally awoken to the horrors of
23 drunken driving.

24 unfortunately the court is constrained by
25 the vagaries of our law and the extremely lax

People v. Heidgen

1 sentencing statutes in place in New York. The
2 defendant benefits from the fact that he killed two
3 people and physically crippled three others by virtue
4 of a single act.

5 Had he done these things separately,
6 concurrent sentences would be available exposing him
7 to much more time behind bars. Instead, his multiple
8 crimes are counted as a single act with a single
9 sentence while his multiple victims suffer multiple
10 agonies.

11 This paradox is even worse when viewed in
12 light of the fact that New York allows for a sentence
13 of as little as fifteen years for murder, in this
14 case multiple murder. This is offensive and wrong.

15 The lenient nature of New York's sentencing
16 law stems from an overindulgence of criminals
17 exemplified by the emphasis placed on the idea of
18 rehabilitation. Unfortunately we now know after many
19 decades of leniency that rehabilitation does not
20 work.

21 one must only review the recidivism rates in
22 general or examine the number of murder victims whose
23 killers were on parole to reached this conclusion.
24 However, even if one subscribes to the hope of
25 rehabilitation, it should not trump the true

People v. Heidgen

1 underpinnings of the penal system, deterrence and,
2 most importantly, retribution.

The widespread media attention paid to this case provides a significant opportunity to deter potential drunk drivers through the imposition of the harshest sentence available. For too long drunk
7 driving was treated as a minor infraction carrying
8 the risk of just a fine or possibly a license
9 suspension. This is, in large part, why it is still
10 rampant.

11 By imposing the maximum available sentence,
12 this court can convey the message that society will
13 no longer treat drunk driving with a wink and a nod
14 and a slap on the wrist. The case for a strong
15 message on the issue of deterrence is clear.
16 However, more important for my purposes is the issues
17 of retribution.

18 For too long retribution has been disparaged
19 as revenge by those who coddle criminals. It is
20 seldom mentioned when, in fact, it is the most basic
21 and most important of the three tenants of the penal
22 system.

23 Deterrence is a wonderful side effect, but
24 it does not address the crimes at issues which is
25 what the sentence is actually supposed to do.

People v. Heidgen

1 Neither does rehabilitation address the actual crimes
2 for which the criminal is being punished. worse, it
3 elevates the interests of the criminal above those of
4 society in general.

5 In this case, of course, rehabilitation
6 should not even be considered. If we believe the
7 defendant, he is simply a victim of circumstance with
8 nothing to rehabilitate. Alternatively, we must
9 recognize that his absolute lack of remorse, his
10 consistent dishonesty and attempts to thwart justice
11 during the trial, the pre-trial hearing and into the
12 post-trial motions, render him a noncandidate for
13 rehabilitation.

14 Deterrence and rehabilitation should be
15 considered desirable byproducts of a prison sentence,
16 but its true purpose should be retribution for what
17 the criminal has done to his victims. In that
18 regard, I will now attempt, futilely, I assure you,
19 to convey some small sense of the horror and
20 devastation the defendant has wreaked on me and my
21 family.

22 when my wife advised me that it was time to
23 start a family, I was very sceptical. I was not
24 particularly fond of children, had very little
25 experience with them and enjoyed my life just the way

People v. Heidgen

1 it was. I now know how foolish this outlook was as I
2 have learned that fatherhood is the greatest endeavor
3 a man can undertake. My children are the focus of my
4 existence. They justify my life. Without them, I
5 would be nothing. Katie taught me all of this.

6, when I met her for the first time in the
7 delivery room, it was as if someone flicked a light
8 switch. My doubts and fears disappeared and I
9 instantly fell in love with her. As she grew, my
10 wife and I came to realize that being parents was the
11 most satisfying thing to which we could ever aspire.

12 Katherine taught us what it really meant to
13 be a family, to be in love, with her and each other.
14 She opened my eyes as to what my life should really
15 be about. She helped elevate my love for my wife to
16 a level I didn't know existed. Sharing Katie brought
17 us together and strengthened our marriage in a manner
18 I cannot describe.

19 From the beginning, we knew Kate was a
20 special child. Our older relatives advised us not to
21 get used to that type of behavior from our children
22 because you only get one like that. Now, as the
23 father of four, I realize how true this was.

24 unlike other children, Kate woke up smiling,
25 not crying, each morning. She would wait patiently

People v. Heidgen

1 in her crib until her mother or I would peek around
2 the door jamb, and when she saw us, her face would
3 light up like the sun. At the age of six months, she
4 earned the first of many nicknames, smiling Kate.
5 You can see from the pictures that that nickname was
6 apt.

7 Kate's incredible effect on us quickly
8 convinced yen and I to have more children. As our
9 family moved from three to six in just five years,
10 life just kept getting better, and Kate shined as
11 both a daughter and a sister.

12 She was a quintessential big sister. She
13 doted on her younger siblings and always included
14 them in her games, even when she had friends over.
15 she was Grace's best friend and loving guardian to
16 Eamon and Colm. She loved to help her mother in
17 the kitchen, and my father-in-law once remarked that
18 she was more mechanically inclined than yen and I put
19 together.

20 I often say that while my wife and I are the
21 foundation of our family, Kate is the cornerstone,
22 the first and most important building block placed,
23 without which there would be no more. Her absence
24 has crippled our family as severely as you can
25 imagine.

People v. Heidgen

Every aspect of my life is defined by grief and anxiety over Katherine's death. The first sensory input I received upon regaining consciousness that night was the sound of my wife screaming, Neil, Katie's dead, Katie's dead. of course, I didn't want to believe. I told yen, No, she can't be, she is just hurt real bad, she'll be okay, I'll get help. of course, I didn't know my wife was holding my daughter's head in her hands when she yelled to me.

Ten knew Kate would never be okay, and despite my words, so did I. I simply didn't want to accept it.

Throughout that night, I begged the emergency workers and medical personnel to let me die. Today the only thing that keeps from me suicide is the responsibility of raising my other children. If Katie were an only child, I would have taken my own life a long time ago.

while my physical injuries are the least of my worries, they are objectively significant, and I will take a moment to describe them so you understand the context in which I suffer Katherine's loss.

The defendant broke my back in two places, he ruptured two of my spinal discs. He broke my nose and three of my ribs. He collapsed one of my lungs,

People v. Heidgen

1 damaged my heart, liver and bladder.

2 I spent a month in three different
3 hospitals. I was separated from my wife for a week
4 immediately after our daughter was killed. I had to
5 be released from the hospital on a day pass to attend
6 her wake and funeral in a wheel chair and gave her
7 eulogy in a back brace propped up on crutches.

8 I have undergone two surgical procedures and
9 will probably require future surgery because the
10 fracture has not properly healed. I attend physical
11 therapy two times a week for intense two-hour
12 sessions. I am deprived of my family's company
13 during this time, but it is necessary because,
14 without therapy, I am physically incapable of
15 working.

16 I am in constant pain which is exacerbated
17 by every physical movement, including breathing and
18 blinking. coughing and sneezing are agonizing. I
19 slept in a recliner for five months after the crash
20 because I couldn't lie flat in bed.

21 I can no longer run, bend or twist. My
22 right leg gives out several times a month and I fall
23 down. I cannot play physically with my children.
24 sometimes they forget and jump on me. This makes me
25 cry out in pain, and, on many occasions, I have come

People v. Heidgen

1 close to striking them. This is unspeakably ugly to
2 me.

3 My wife has to shovel snow from our
4 sidewalk. I have to ask friends to put up our
5 Christmas tree or move pieces of furniture. I cannot
6 change a flat tire, climb a ladder or carry grocery
7 bags. I take 17 pills a day including
8 antidepressants, blood pressure medications, muscle
9 relaxers and painkillers.

10 The physical limitations briefly described
11 here are, as I said, the least of my worries. They
12 pale in comparison to the emotional and mental
13 torment I suffer every day because of what this
14 filthy child killer did to us.

15 From my first waking moment, my thoughts are
16 dominated by sadness, grief and anxiety. At least
17 three times a day I am overwhelmed by grief and break
18 down in tears despite the fact that I take two
19 powerful antidepressants. I frequently cry in front
20 of my children. This is extremely painful to me and
21 damaging to them.

22 My children suffer along with Jen and I.
23 Grace told us that she wished we had all died that
24 night. She has slept in our bed every night since
25 coming home from the hospital. she can't be alone in

People v. Heidgen

1 a room for more than a few seconds without being
2 overcome by fear. she attends therapy, but it does
3 not help. she has told us that her therapists don't
4 know what they are doing and therapy does nothing.
5 Grace is six.

6 I also attended therapy for over a year. It
7 meant more time away from my family, but I hoped it
8 would ease my pain. It did not, and I abandoned it.
9 I have no hope of life without grief. I do not look
10 forward to the future except to the extent it brings
11 me closer to the release of death.

12 My son Eamon lives in fear of the defendant
13 who he refers to as the bad man who killed Katie. He
14 too sleeps in our bed every night because his room is
15 closest to the landing and he's afraid the bad man
16 will get him first when he comes up the stairs. I
17 tell him that I will protect him, but we both know
18 that I didn't protect Katie. so my words are empty.
19 He cries over the loss of his sister every day.

20 My son colm is too young to comprehend these
21 events. His suffering consists of being deprived of
22 the love and compassion of his big sister, watching
23 his parents and siblings suffer from being deprived
24 of their full support and nurturing care. I expect
25 that in time his memory of Katie will fade to

People v Heidgen

1 shadows. This saddens me.

2 when I wake, I silently wish Kate good
3 morning. I do not believe she can hear me but I hope
4 so. I rise slowly because of the pain in my back. I
limp to the bathroom and swallow the first of eight
6 painkillers and six muscle relaxers I will take each
7 day.

8 I perform my ablutions through a veil of
9 tears, wracked with sobs. I dress and descend the
10 stairs, stopping on the landing to kiss the cold
11 glass covering Kate's picture saying I love you Katie
12 as I do so. I sullenly kiss my wife and three of my
13 children good-bye.

14 I drive to work alone frequently crying or
15 screaming with rage. when I see a clear blue sky, I
16 speak to Katie again, not believing, only hoping she
17 hears me. I struggle through my workday consumed and
18 distracted by my grief and pain. I have no
19 confidence in my ability to continue to provide for
20 my family and this makes my anxiety worse.

21 when i return home from work, I take my
22 dinner alone in my room. I cannot stand to sit at
23 the table with Kate's empty chair. Each night, I
24 make some excuse for my other three children as to
25 why I cannot eat with them, but they know I'm lying.

People v. Heidgen

1 I do not know how my wife does it, beyond my
2 general knowledge that she is the strongest woman I
3 ever met. I fear someday it will prove to much for
4 her. It pains me to see this once vibrant woman
5 crushed under the weight of her suffering. she alone
6 knows how much I miss Kate. Although we console each
7 other as best we can, I cannot stop her pain.

8 we hug, but rarely kiss. our embraces are
9 not passionate, only conciliatory. Our conversations
10 are brief and usually marked by tears.

11 By eight o'clock, I'm exhausted and bent
12 over with pain. I take a heavy dose of medication so
13 I can get a few hours of uninterrupted sleep.

14 I no longer pray with my three other
15 children. I have no faith. I tell them that we must
16 wish Kate good night and sweet dreams and that
17 someday we will be reunited with her. I do not
18 believe this but I hope it is true. My hope is
19 desperate because I believe it is futile.

20 As I drift into fitful, drug induced sleep,
21 I try to talk silently to Katie to tell her about her
22 brothers and sister, but I feel awkward and foolish
23 because I don't know if she can hear me.

24 This is especially painful because when Kate
25 was here with me things were never awkward. we could

People v. Heidgen

1 sit in silence holding hands and watching TV or laugh
2 and sing uproariously and unselfconsciously. Now I
3 am reduced to stumbling, halting words in my head and
4 find myself repeating I miss you over and over again.
5 I feel guilty for burdening her with my grief.

6 My sleep is punctuated by nightmares and I
7 wake often. I rarely dream of Katie alive. I have
8 done so only three times since her death. Although
9 waking from these dreams is incredibly painful, I
10 wish I had them more often. I wake after three or
11 four hours and stare aimlessly at the pointless
12 television. I drift back to sleep in the early
13 morning for a few more fitful hours before starting
14 the cycle again.

15 I do not know joy. I have no hope for a
16 better future here on earth. I hope but do not
17 believe I will see my daughter again. I am wracked
18 with guilt for denying my other three children the
19 father they deserve but I cannot overcome my sadness.
20 My life is desolate:

21 MS. MCCORMICK: That concludes the victim
22 impact statements.

23 THE COURT: May I see counsel at the bench,
24 please?

25 (whereupon, an off-the-record conversation

People v. Heidgen

1 took place at the bench.)

2 THE COURT: I think, at this time, ladies
3 and gentlemen, we are going to break the proceedings
4 until a quarter to two. See you then.

5 (whereupon, a luncheon recess was taken.)

6 A F T E R N O O N S E S S I O N

7 THE CLERK: On the record please,
8 Indictment 1910-05, the People against martin
9 Heidgen. Case on for sentencing.

10 MR. LAMAGNA: Defendant ready.

11 THE COURT: Mr. Martello, Mr. Lamagna, would
12 one you of like to address me?

13 MR. LAMAGNA: Judge, before Mr. Martello and
14 I make our statement to the court, we would ask the
15 Court's indulgence to have various family members of
16 the Heidgen family address this Court.

17 THE COURT: Yes, of course.

18 MR. LAMAGNA: We would ask first for victor
19 Aponte.

20 MR. APONTE: Good afternoon, your Honor.

21 THE COURT: Good afternoon, Mr. Aponte.

*22 MR. APONTE: My name is victor Aponte. I am
23 Marty's stepfather. I met Marty in 2004 when he
24 moved to New York. I was dating his mother at the
25 time. I asked Marty for his mother's hand in

People v. Heidgen

1 marriage.

2 I was so impressed with Marty's southern
3 politeness and his maturity for his young age. Marty
4 showed so much enthusiasm towards his job. Every day
5 he came home talking about his plans for the future
6 and job opportunities in New York.

7 He showed me -- he told me that getting on
8 the train every morning with everyone headed to work
9 was like getting a burst of energy. He loved being
10 part of the working force. His dedication and
11 perseverance was admirable for a young man of his
12 age.

13 Marty always was so willing to help his
14 mother and me in any task that we asked. on Sundays
15 we would watch football games and discuss the plays.
16 He enjoyed cooking for us on weekends. It amazed me
17 to see his culinary abilities. Marty is very family
18 oriented and enjoys good conversation over a well
19 prepared meal.

20 For people to say that Marty and i were
21 having problems over my marriage with his mother is
22 nothing but a lie.

23 I was very impressed with his love and
24 respect for his mother. Many times Marty told me
25 that he was -- he told me that he was working hard

People v. Heidgen

1 and looking forward to a good future so he could take
2 care of his mother. He said that he would never
3 consider putting her in a retirement home.

4 what I saw in Marty was a happy, young man
5 who was looking forward to his future and fascinated
6 with the challenges in life. Marty's ability to
7 relate to young children helped establish a great
8 relationship with my grandson Andrew who was always
9 asking when he would see Marty again to play.

10 Marty is a very kind-hearted person who
11 under no circumstances would purposely hurt anyone.
12 His hundreds of hours of charitable work is proof of
13 the kind of person that Marty is. He did volunteer
14 work for the Dorkus House of battered women. This
15 place provides support and a home for women who have
16 nowhere to go after being beaten by their husbands or
17 boyfriends.

18 He helped the Leap Frog program in oxford,
19 Mississippi. This charity helps underprivileged kids
20 and provides mentorship for them; Marty also coached
21 a soccer team for children, seven and eight-year
22 olds, at the YMCA. He co-directed soccer camps for
23 kids ages five through twelve at the Little Rock
24 Athletic Club. He designed T-shirts for the 5K run
25 with proceeds benefiting st. Judes Cancer Research

People v. Heidgen

1 Hospital in Memphis.

2 This, your Honor, is the life of someone who
3 would never, never set out to intentionally hurt
4 anyone.

5 The day of July 2nd, 2005, Marty made the
6 mistake of drinking and driving after a 4th of July
7 party. This caused a tragic accident which resulted
8 in the loss of the lives of Katie Flynn and Stanley
9 Rabinowitz. Marty will always have to live with this
10 guilt on his conscience.

11 I know Marty made a mistake for which he
12 wants to take responsibility but to punish him for a
13 long sentence would not be fair and just.

14 Marty got lost because he barely drove on
15 Long Island. He worked in the city and took the
16 train. He had very little experience driving on the
17 Island.

18 Your Honor, this is a young man who has lead
19 a life of service to others. At the age of 24, Marty
20 had given more to society than most people do in a
21 lifetime.

22 His character is immutable. It doesn't
23 change because of one mistake. I am not talking
24 about someone who has a pattern of hurting people.
25 on the contrary, he is always ready to help those in

People V. Heidgen

need.

2 Please, your Honor, give him an opportunity
3 to redeem himself. Justice is about fairness. what
4 good would it be for society and for Marty to spend
5 many years in prison?

6 I beg of you, your Honor, take all this into
7 consideration and make a decision as a parent and as
8 a judge that is fair for everyone. Please; your
9 Honor, Marty is my wife's only child. Please, be
10 lenient. Thank you.

11 THE COURT: You are welcome.

12 MR. LAMAGNA: Your Honor, we would ask that
13 Kurt Heidgen address the court.

14 THE COURT: Yes.

15 MR. K. HEIDGEN: Your Honor, I'm Marty
16 Heidgen's father. I think I know him as well as
17 anybody and probably better than anybody. we have a
18 close relationship.

19 it really is painful to hear the prosecutor
20 categorize him the way she has but there's not really
21 any basis as far as--- you know, the case is bad
22 enough, tragic enough, and I can only imagine the
23 agonies the Rabinowitzes and Flynns have gone
24 through. I mean, I can't imagine. It's beyond
25 comprehension. But to say that he would deliberately

People v. Heidgen

1 do anything like this, it breaks my heart, because
2 he's a good person and it's the furthest thing from
3 the truth.

4 It was a tragic accident. The end results
5 are the same as so many accidents. Again, you know,
6 he's devastated. It's been 20 months since the
7 accident on July the 2nd. we have all suffered a
8 lot. Maybe in comparison to the other families,
9 maybe it's not much. I don't know how it can be any
10 worse because he's an only son, an only child. They
11 have had the burden of seeing him two or three times
12 a week and it's tuff. It's really tuff. It's tuff
13 for all of us.

14 I don't live here. I'm an over-the-road
15 truck driver, so I'm, you know, in forty-eight states
16 and I try to get back here as often as I can. As a
17 truck driver, I see drinking and driving and
18 accidents *all* the time. It's tragic. There's no
19 easy answer to the problem and I don't have an
20 -answer.

21 I.-think that, you know, just putting
22 somebody in prison for a long time is not necessarily
23 a positive thing because it didn't seem like I heard
24 anything this morning about, you know, what positive
25 could come out of this, except that maybe this tragic

People V. Heidgen

1 accident, there will be more thought put into warning
2 young people particularly about the dangers of
3 drinking and driving.

4 That's something Marty would be very good
5 at. He relates very well to young people and he's
6 devastated. As you will hear when his achievements
7 are run through, the work with the center, the young
kids, he really likes the young kids'. He has coached
9 them.

10 so little Katie's death was -- you know
11 again, for a week he couldn't talk. we couldn't
12 speak to him because he was totally devastated by
13 what he had done. Maybe some of his sorrow was for
14 himself. I don't know. But it seemed it was the
15 tragedy he caused more than anything else. I don't
16 know what the results were.

17, I think Margo is going to tell you about
18 some of his achievements. I could start listing them
19 but, to me -- he graduated in 2003 from the
20 university of Mississippi with a degree in history
21 and also in Spanish. He went out and was successful
22 working.

23 He had many friends from all walks here. I
24 was most proud that he went through a private school
25 system, a catholic school system, and he was a good

People V. Heidgen

1 student. He went through with a lot of privileged
2 kids in a private school. But, in the full spectrum,
3 mostly more affluent kids, and he related to those
4 kids real well. But he went outside that school and
5 related to kids in public schools. He related to
6 blacks, Hispanics, all kinds of people.

7 I think that was evident in the way he was
8 liked by his peers. He was captain of the soccer
9 team, captain of the rifle team. They liked him and
10 respected him.

11 so I am proud of him for his character, the
12 way he was able to reach other people and didn't have
13 any preconceptions about anybody and got along with
14 everybody. They liked him and we loved him for that
15 aspect.

16 so, you know, what's happened is just --
17 most of these **DUI** cases are a good person did a bad
18 thing. You know, again, it's devastating. words can
19 can't, you know, solve the problem. we would just
20 like to reach out somehow to the people. They are
21 not here right now, but, obviously they are extremely
22 angry and, you know, it's just a tragic thing.

23 I ask you to take these things into
24 consideration about martin Heidgen and try to find it
25 in your heart to see that there's goodness in his

People v. Heidgen

1 heart and that he would someday be a real positive
2 influence as far as relating his personal tragedy to
3 others. If he could just save one life, it would be
4 well worthwhile.

5 If he has the opportunity at sometime in the
6 future to do that, knowing him like I do, I know
7 that's what he would do. He'll be a great citizen
8 and is a great citizen, but he would be a real
9 positive influence on many people. Thank you, your
10 Honor.

11 THE COURT: You are welcome.

12 MR. LAMAGNA: Margo Aponte.

13 MRS. APONTE: Good afternoon, your Honor.

14 THE COURT: Good afternoon.

15 MRS. APONTE: Good afternoon, everybody.

16 I am Marty's mother. I want to take this
17 opportunity to tell the Flynn family and the
18, Rabinowitz family how truly and deeply sorry I feel
19 for the pain and suffering my son, Marty, has caused
20 in your lives. You are and always will be in my
21 prayers.

22 This is a tragedy that has affected so many
23 lives. I have also experienced pain because of
24 what's happening to my son, my only child.

25 I know you and your family understand how

People v. Heidgen

1 this accident, this disaster, has turned everyone's
2 life into a nightmare. My son made a horrible
3 mistake. He understands he has to take full
4 responsibility for what he did.

5 I know my son. I raised him to be
6 sensitive, kind-hearted person. In the 21 years
7 prior to the accident, Marty has been a faithful
8 servant to God, to his family and to those in need.

9 There's only a small number of young adults
10 with a service record like Marty's. Your Honor, you
11 have over a hundred letters written to you from all
12 over the country that speak about Marty and his
13 character.

14 All the letters, in different words, all say
15 what kind of person my son is, responsible with a
16 strong work ethic, an exemplary citizen, optimistic,
17 athletic and always involved in sports, a good friend
18 who has always and will always give whatever he has
19 to his friends.

20 He was elected captain of his high school
21 soccer team by his peers, not only because he was one
22 of the best team players, but also because they
23 believed he was the fairest leader. During his high
24 school years, he joined the ROTC where, again, he was
25 elected by his peers to be the captain of the rifle

People v. Heidgen

1 team.

2 Marty always stayed very active. He did
3 hundreds of hours of community service, always
4 helping those less fortunate, coaching unprivileged
5 children and providing mentorship for them in the
6 Leap Frog program in oxford, Mississippi. He also
7 volunteered to coach a soccer team for children ages
8 seven and eight at the YMCA.

9 My son, your Honor, would come home talking.
10 He was so proud of having an opportunity to help
11 children with difficulties in sports. He would say,
12 Mom, that is why I like soccer, because anyone can
13 play, tall people, short people, It doesn't matter a
14 person's size, It's about skills, mom, and I can help
15 these children develop them and feel good about
16 themselves. This., your Honor, is how my son feels.

17 Marty also helped organize fundraising
18 activities to help the Dorkus House and battered
19 women. He helped sell and deliver poinsettias during
20 Christmas to raise money for these abused women.
21 This is my son. which young man at the age of 16
22 would spend his free time helping battered women? My
23 son did.

24 During this time, he also worked at the
25 athletic club in Little Rock where he headed the Down

People v. Heidgen

1 under Program. This is for children ages four
2 through seven. I remember so many parents would stop
3 and tell me how much the children loved Marty and how
4 appreciative the parents were of his love and
5 dedication to the little ones.

6 Marty continued his volunteer work in
7 college. He volunteered his time in organizations
8 such as st. Jude's Cancer Research Hospital where he
9 organized and participated in different charitable
10 fundraising activities.

11 In the Pi Kappa Alpha fraternity, he
12 volunteered to be a chaplain and also the
13 philanthropy chairman. My son never forgot his
14 responsibilities to others, your Honor.

15 As parents, Marty's father and I taught him
16 love, compassion and religious principles. He went
17 to catholic schools, and, with so much pride, we saw
18 our Marty develop into a caring, optimistic and
19 responsible human being. This, your Honor, is my
20 son.

21 Measure the man by his actions. Look at his
22 life. Put the incident in perspective. I implore
23 you, while in the quiet of your chambers, to consider
24 my son and judge his actions in the context of his
25 entire life.

People v. Heidgen

1 I know Marty is deeply remorseful for the
2 pain he has caused the Rabinowitz and the Flynn
3 family. My son has to live with his conscience the
rest of his life. He is in utter shock as to how his
5 life has changed. He is living in pain and remorse.
6 Every time I visit him, he tells me his faith in God
7 is helping him get through this.

8 All of our lives have been changed since
9 that tragic morning of July 2nd, 2005. It was clear
10 that my son was lost, not knowing where he was going
11 on an unlit parkway. He was unfamiliar with the
12 roads in New York. He only had lived here a few
13 months. He worked in the city where he took the
14 train. He was going to meet friends. He called them
15 several times to get directions. He called them
16 again when he was lost.

17 My son made the terrible mistake to drive
18 under the influence of alcohol which resulted in this
19 horrible accident. For that, he takes full
20 responsibility.

21 Is it fair to charge him with murder?
22 Absolutely not. At least twelve other alcohol
23 related accidents have happened on Long Island since
24 Marty's and no one has been charged with murder.

25 we just saw how Karen Fisher, with a

People v. Heidgen

1 previous record, with a suspended driver's license,
2 who has driven while intoxicated with children in the
3 car, killed Garden city priest monsignor William
4 Costello and left the scene of the accident, has been
5 charged with manslaughter. Just this month, they
6 negotiated a plea bargain.

7 Then there's Young Cho, a drunken driver
8 with a vehicular assault conviction, who killed a
9 father and is charged with manslaughter.

10 In July of 2005, a former firefighter killed
11 a teenager and received thirty-two days behind bars
12 and then, in January of 2007, Danielle Baymack is
13 charged with second degree manslaughter for the death
14 of fellow officer while driving drunk. The list goes
15 on and on, your Honor.

16 In each of these cases, the accused received
17 manslaughter. My son is the only one charged with
18 murder. Did he have a prior record? No. But he
19 alone was singled out.

20 Your Honor, where is the justice here?
21 Marty's case is also a DWI case. It is not a murder
22 case. Please, your Honor, don't single him out and
23 place him in a class by himself. He's guilty of
24 driving drunk which resulted in the death of two
25 people but no more than those peoples I have listed.

People v. Heidgen

1 The tragic circumstances of all the media
2 attention pushed this to be a murder case but it is
3 not.

4 what I ask you today, your Honor, is to
5 provide all the families involved justice. Look at
6 Marty's life and how my son has contributed to
7 society. Judge his actions in context. Look at his
8 life. was his life reckless? No, it was not. He
9 was a caring individual who helped others all the
10 time and just made a horrible mistake. He's prepared
11 to pay for that.

12 Please, your Honor, for the sake of what is
13 just, temper your decision taking all that I have
14 said into consideration. Please, give my son an
15 opportunity to redeem himself. Thank you.

16 MR. LAMAGNA: Your Honor, Father Thomas.

17 FATHER THOMAS: Good afternoon, your Honor.

18 THE COURT: Good afternoon.

19 FATHER THOMAS: Thank you for the permission
20 to address you today and all those who are present.

21 Before I offer my prepared remarks, I think
22 I would be very remiss not to recognize the
23 extraordinary accounts that we heard this morning of
24 the pain and suffering from this accident. It was
25 truly extraordinary, and as I will indicate later in

People v. Heidgen

1 my prepared remarks, as I have prayed for all of you
2 these past months, I promise you, to the Rabinowitz
3 and Flynn families, to continue praying, most likely,
4 for all my life as a priest.

5 I come here for two reasons: To join with
6 the Marty's family to ask for mercy and leniency and,
7 also, to give voice with Marty. It is our faith
tradition, in the Jewish-Christian tradition, to
9 never ever Abandon another human being for any
10 reason. I can only be true to myself, as a priest
11 who has grown to know and love this young man, to
12 never abandon him. so, as I promise to pray for
13 victims, I also promise never to abandon him.

14 Some may wonder why a priest would insert
15 himself in this room, in this tragedy, in this
16 caldron of pain and suffering. I present myself
17 today as a priest, a minister of faith who has been
18 very attentive to this case. But, most of all, I
19 present myself because I am a pastor and martin
20 Heidgen is my parishioner.

21 In the catholic tradition to which Martin
22 and I belong, as do many in this tragedy, I bear the
23 very sacred responsibility to minister to martin for
24 a spiritual and pastoral well being. Martin has
25 given me the privilege of offering that ministry,

People v. Heidgen

1 and, I have come to know him very well. I say
2 without qualification, I know his heart, and I would
3 be less a man not to be here today and to meet my
4 responsibility as a pastor.

5 This entire tragedy has been filled with so
6 much pain and so much sorrow, so much sadness and
7 grief. This morning you heard broken hearts speak.

8 It is so evident that Katie Flynn was so
9 deeply and well loved as a daughter, sister and a
10 granddaughter, and Stanley Rabinowitz was so well
11 loved as a dad and a husband.

12 The broken heartedness we heard this
13 morning, I'm sure, saddened everyone in this room and
14 is almost indelibly described in our hearts and minds
15 and memories.

16 As I indicated earlier, I assure you, I come
17 here as a priest who has prayed, not only in the
18 morning but also in the evening, for all of you, for
19 the Flynn and Rabinowitz families, for Katie and
20 Stanley, for Martin and his family and for you,
21 Judge.

22 The pain of the Flynn and Rabinowitz
23 families is beyond what I have ever experienced and
24 what I can imagine. I am not a spouse. I am not a
25 parent. But, as a priest, repeatedly, I have shared

People v. Heidgen

1 in the pain of spouses and siblings. It is my
2 vocation.

3 My prayers these months have been for many
4 intentions but all my prayers have been governed by a
5 desire for healing, healing for all. Because I have
6 not experienced the profound sadness and loss of the
7 families of Katie and Stanley, I can only share my
8 empathy and continue to pray for your healing as I
9 have promised and for the healing of all others who
10 loved these two people.

11 I respect, I have reverence, I recognize the
12 holiness and sacredness of the Rabinowitz family, the
13 grief and sadness of the Rabinowitz family and the
14 Flynn family. As another human being and as a
15 priest, I share that role. It is the right thing for
16 all of us to do. It is what God calls us to do, to
17 reverence that grief that we heard.

18 At the same time, in my vocation as pastor,
19 I know too that Martin has been very well loved by
20 his family, and though different from the pain of the
21 Flynn and Rabinowitz families, as his mom and dad and
22 stepdad just shared, Martin's family is also filled
23 with sadness over these past 20 months. I am here
24 because I have come to know their pain through my
25 ministry.

People V Heidgen

1 I believe the court needs to know about
2 that. I know that martin accepts responsibility for
3 what happened in July of 2005, and I know he
4 struggles every day with that responsibility. He
5 feels it deeply in his heart and I know that with
6 certainty. I join with his mom and dad in
7 acknowledging his responsibility and join to that
8 this plea for leniency and mercy.

9 Concerning the accident and deaths of Katie
10 and Stanley, he was profoundly sad. He has shared
11 with me repeatedly on numerous occasions his feelings
12 and emotions about this tragedy. He has expressed to
13 me his deep sense of remorse and repentance. we have
14 shared readings about this topic from scripture and
15 contemporary literature.

16 He feels deeply the responsibility he
17 shoulders for what has happened. The deaths and
18 injuries caused by his driving while intoxicated
19 causes him much sadness and sorrow. He too is
20 destroyed and broken hearted. His words and his
21 tears have made this clear. He knows he is
22 responsible. At the same time, there was no
23 intention on his part to cause harm.

24 I am often called as a priest to minister to
25 people in grief and sorrow and remorse. I am often

People v. Heidgen

1 called to discern with people their intentions. I do
2 it often. I have no doubt about the depths of
3 Martin's sorrow and I have no doubt that he had any
4 intention to cause anyone harm in the early morning
5 hours of duly 2nd, 2005.

6 Some have questioned his expression of
7 remorse. we all know that some people express their
8 remorse and sorrow in very public ways. usually such
9 public expression is very sincere and heartfelt.
10 Occasionally its sincerity is in question.

11 some people, such as martin, express their
12 remorse or sorrow in more private ways. Maybe you
13 are one of those people and sometimes that is
14 questioned. But that someone expresses sorrow in a
15 more private manner in no way reflects necessarily a
16 lack of depth of sorrow. Again, I declare to you,
17 Martin feels both responsible and profoundly
18 remorseful for all that has transpired.

19 He has been convicted under the description
20 of having exhibited depraved indifference to life.
21 All who new martin prior to this accident know that
22 he never demonstrated any kind of behavior indicative
23 of a depraved indifference to life. In fact, just
24 the opposite was true.

25 As his parents just said, he always

People V Heidgen

1 expressed a love for life, a love, kindness and
2 compassion for others, care, respect and reverence
3 for others. His personal history, academic, athletic
4 and socially, all indicate a love and respect for
5 life. He tells me with great delight how during high
6 school he worked with kids in summer camp and soccer
7 clinics. The administration of his high school in
8 Arkansas had nothing but positive things to say to me
9 about him.

10 At college, he brought his faith and
11 conviction to his fraternity and served as a
12 chaplain. In that role, he organized prayer services
13 and organized community projects. In addition, he
14 became involved in inter-faith projects and worked
15 with victims of abuse, as his mother just outlined.

16 in his immediate employment after college,
17 he used his bilingual skills to assist Spanish
18 speaking clients. Throughout his high school and
19 college years, he expressed a love for life and
20 respect for others, a true reverence for the gift of
21- what it means to be a human being, and all those
22 experiences taken together make even more profound
23 his sense of responsibility and guilt and remorse for
24 the deaths of Katie and Stanley.

25 It is no exaggeration, my friends, to say

People v. Heidgen

1 that martin has expressed and practiced an unusually
2 high level of faith for a young man in his twenties.
3 In the short time that martin was a parishioner in
4 valley stream, his presence was noted each Sunday at
5 mass because not too many single young men of his age
6 are regular church goers. Martin's quiet, but
7 regular, weekend attendance was noteworthy and always
8 observed.

9 His religious formation that his mother
10 spoke about and his religious practice that I have
11 noticed indicate that he knows well and feels very
12 humanly the experience of guilt and remorse, the need
13 for that very sacred experience necessary for every
14 human being, the need for repentance.

15 Even under the circumstances of these past
16 20 months, he has continued to express his faith. At
17 the weekly mass at the county jail, martin has
18 ministered both as sacristan and as lector. He has
19 assisted the priest there and set up for mass and he
20 proclaimed the Sacred readings to the other inmates.

21 He has outreached to the other inmates at
22 the jail using, again, his bilingual skills to teach
23 English. He has been most cooperative with the
24 policies and procedures of the jail.

25 This tragedy continues to be traumatic and

People v. Heidgen

1 it continues to be traumatic for martin. People in
trauma struggle every day, as we heard this morning,
3 to maintain their faith, to believe in God's love and
4 to find meaning and confidence in God's word. I have
5 been amazed at his ability to maintain his life of
6 spirit and soul this past year and a half.

I say -- I can say with no embarrassment, my
8 visits to him has enriched my humanity and my
9 priesthood.

10 I hear a man who is intelligent and
11 articulate about many topics from sports to politics
12 to religion. i see a young man who can still greet
13 me when he walks through the visitor's section of the
14 prison, still greet me with a smile. Yet, I know his
15 heart is heavy with sorrow.

16 He is a person who knows he is responsible
17 for a terrible tragedy that does require punishment.
18 But, at the same time, as is so often the case with
19 human experience, he yearns, desires, longs, hopes,
20 for another opportunity to live a life in which he
21 can make a positive contribution to the lives of
22 others.

23 So, for me, as a priest, as a human being,
24 as a man who has grown to know this young man so
25 well, the question is, how does justice allow for

People v. Heidgen

1 that opportunity. we have to be confident that
2 justice does that.

3 Today's sentencing of martin is the
4 concluding step in the legal process of this court
5 that has the sacred charge and awesome responsibility
6 to effect useful justice. In the Jewish-Christian
7 faith and tradition that so many in this room share,
8 justice is understood as one of the greatest virtues,
9 a virtue so awesome that the psalmist of the
10 Jewish-Christian tradition ultimately leaves the
11 fulfillment of justice to God.

12 still, as seen in the story of Moses and
13 through the proclamation of the prophets, God who
14 creates us in his own image and likeness, as Genesis
15 tell us, invites us to join with God in working out
16 justice. So justice is part of our faith tradition
17 we share as well part of our nation's ambition and
18 this court's ambition.

19 So true justice always transcends politics.
20 True justice, the People have the right to expect to
21 be consistent, fair minded and even handed. The
22 tradition of justice looks to prior example. True
23 justice does not set example to make a point. True
24 justice makes sure its consistent with law. So
25 justice always depends on wisdom and is often checked

People v. Heidgen

1 by temperance.

2 So that brings me directly to the precise
3 question for the final step today: what is the
4 appropriate sentence for martin? certainly a just
5 sentence is one that respects the truth and surely it
6 has a healthy purpose.

7 Does an appropriate sentence serve the
8 purpose of retribution? Retribution usually leaves
9 the human person unsatisfied and still hurting. we
10 experienced that this morning.

11 Does an appropriate sentence serve the
12 purpose of deterrence? Sociological studies question
13 the deterrent value of harsh sentences.

14 Is the purpose of martin's sentence
15 rehabilitation? His past behavior, attitudes and
16 actions, as we have come to know them, do not
17 demonstrate the great need for rehabilitation. He
18 has no previous criminal record. His prison behavior
19 has been excellent.

20 So what **is** it that we hope for today, a very
21 difficult question. whatever sentence is given will
22 serve as a punishment for martin's responsibility for
23 the deaths that his driving while intoxicated caused
24 a year and a half ago.

25 The time he serves in prison will be a time

People v. Heidgen

1 that he continues to deal with what he has done. I
2 know him well enough, I know him better than anyone
3 in this courtroom, except for his family, and, with
4 that knowledge, I expect that martin will use the
5 time as best he can.

6 It is my hope that he will continue to share
7 his gifts and talents with other inmates as he has
8 already done here in Nassau County. It is my prayer
9 that he will be able to maintain his interior
10 strength that has allowed him to be a man of such
11 strong spirit and soul.

12 As his pastor, it is my responsibility to
13 continue to assist him in that regard and I assure .
14 the court I will continue to take that responsibility
15 seriously.

16 His family requests leniency and mercy. I
17 join in making that request. I believe the maximum
18 sentence of 25 years to life will only serve the
19 purpose of retribution. A sentence of lesser
20 duration will encourage and allow this man to
21 continue to understand his responsibility, to do
22 whatever he can to be a positive influence in the
23 very difficult prison system and to look forward to
24 returning as a productive member of our society.

25 we who know martin best know that he is not

People v. Heidgen

1 a person with a depraved indifference for life and we
2 believe he had no intent to hurt anyone on that
3 tragic morning. we also give witness that when he
4 returns from prison, whenever that will be, he will
5 not be a danger to society.

6 Along with his family, your Honor, I ask you
7 to offer him leniency and mercy as you assign his
8 sentence and I thank you for your time.

9 THE COURT: Thank you, Father.

10 MR. LAMAGNA: If I may?

11 THE COURT: Yes.

12 MR. LAMAGNA: Your Honor, this is the
13 culmination of probably one of the most difficult
14 matters, I think, any of us will probably see. The
15 pain and suffering, the sorrow that has been
16 exhibited in this case. This case truly was about a
17 tragedy of immeasurable proportions.

18 unfortunately we cannot change what has
19 happened and we can not undo what has been done. I
20 come before this court, not only as an advocate and
21, as an attorney representing a client, but I also come
22 to this Court as a person, as a father, as a son with
23 deep sorrow and grief stricken for the pain that we
24 all were influenced by during the course of this
25 trial. In fact, I speak for everybody who has been

People v. Heidgen

1 associated with this case that we will forever feel
2 the palpable pain that was exhibited in this
3 courtroom.

4 Now, I believe it was Mrs. Tangney who said
that they are the victims here. They certainly are
6 the victims, the Flynn family, the Rabinowitz family
7 and the Tangney family. They are the victims. They
8 always have been. There has never been any dispute
9 concerning that.

10 They did everything right that night. They
11 did take the limousine to avoid -- to be safe. I
12 agree with that. we all agree with that. That's
13 what makes what happened that night so tragic.

14 But I'm also grief stricken from hearing
15 everything that was said today, for, also, the loss
16 of a promising young man, a 23 year old, that we see
17 before this court charged and now convicted of murder
18 for a moment in time that, if he could take it back,
19 he certainly would. I think miss McCormick said,
20 that moment in time that caused such tragedy, I
21 couldn't agree more.

22 There are times in life where a moment
23 becomes a defining moment in a person's life but that
24 moment doesn't define who that person is or how they
25 had lived their life.

People v. Heidgen

1 Certainly July 2nd, 2005, was the defining
2 moment in many people's lives that appeared in this
3 courtroom and it was a defining moment in Marty's
4 life. But, again, that moment does not define who
5 stands before you to be sentenced today. It doesn't
6 define the manner in which he lived his life prior to
7 that dreadful, tragic night and it is one of the
8 issues that I ask this court to consider when meteing
9 out a sentence. It is not only the crime itself, the
10 conduct, the impact on the victims, but also who
11 stands before you to be sentenced.

12 Now, we heard many things concerning who
13 Martin Heidgen is. Many of the things and many of
14 the statements made by many of the people were from
15 people who never met Mr. Heidgen, never spoke to
16 Marty, never associated with Marty.

17 The truth -- the truth is there is an
18 objective truth, empirical truth, and then there's
19 truth that people want to believe is the truth
20 because they need to believe that that is the truth.

21 Many of the things that were said about
22 Martin today and throughout the last 20 months were
23 from people who never even spoke to Marty, never knew
24 his background, but it was a truth that they believed
25 to be the truth because they needed it to be that

People v. Heidgen

1 truth because of the monumental tragedy that occurred
2 here. But what was said is empirically and
3 objectively not the truth about the young man who
4 stands before you.

5 NOW, your Honor, I had submitted about a
6 hundred -- a little more than a hundred letters to
7 you that I know you have read. Those are from people
8 who know Marty their entire lives. These are from
9 people who Marty has influenced positively for the 23
10 years that he has been either in Arkansas or in New
11 York.

12 Prior to July 2nd, 2005, by reading these
13 letters and from all accounts, whether it's through
14 the letters or through probation, Marty lived a
15 caring, wonderful, selfless life, an honorable life
16 that brought him to this defining moment, a life any
17 parent would have been proud of.

18 we have heard through Marty's mom how he was
19 raised, we know he was raised in Arkansas and he
20 went to Catholic school. what's important to note,
21 Judge, *is* that all of the things .that this. young man
22 did at 15, 16 years old, he didn't need to do, didn't
23 have to do and he wasn't forced to do. He
24 voluntarily did this because this is what he wanted
25 to do.

People v. Heidgen

1 He didn't have to join and serve in the
2 ROTC. He chose to do that. He didn't have to work.
3 He chose to. He didn't work in some sporting goods
4 store. He didn't work at some Mcoonald's. He chose,
5 at 16 years old, to work as a supervisor of a day
6 care center. That is the tragic irony here, that
7 Marty spent a bulk of his young adult life working
8 with children, not because he had to, but because he
9 chose to, and that is the truth. This is the life he
10 has lead.

11 Not only did he work as a supervisor of a
12 day care center, he co-directed a summer camp when he
13 was at school for children five to twelve years old,
14 not because he had to, but because of who he is, a
15 man who is standing before this court to be
16 sentenced.

17 Furthermore, he volunteered, as we heard
18 from his mom, at the local YMCA to coach young
19 children on the weekends in soccer, children who
20 either didn't have parents that were available to
21 coach their children or children who came from
22 single-family homes that didn't have a dad to be
23 there. He did it. He didn't have to. He chose to.

24 This is the type of person that stands
25 before you. He was voted captain of his soccer team,

People V. Heidgen

1 not because he was the best player, but because he
2 was voted by his peers for his leadership qualities,
3 his compassion and to deal with other people. That's
4 not the only thing we heard. while in the ROTC, he
5 was voted captain of his rifle team.

6 The reason I bring this up, Judge, is how
7 many young people have come before you in our
8 judicial system, or in our personal lives, that we
9 have seen at such a young age, when you are a
10 teenager, that gave so much?

11 I see teenagers all the time that live
12 pretty much as, no offense to that teenager, but
13 pretty much selfish lives, not in a negative sense,
14 but they don't need to be doing anything at this
15 point. They are living their lives going to school
16 and playing. He chose not to do that and that is the
17 truth. That is a fact.

18 So not only do we have to look upon the
19 tremendous tragedy of this case, which is obvious,
20 the desires of the victims and their families, but I
21 ask you, look at the person whom is about to be
22 sentenced, what his life was like.

23 That moment, that defining moment of
24 July 2nd, 2005, does not define the manner in which
25 he, this young man, lead his life.

People v. Heidgen

1 The letters that I submitted, that I had the
2 opportunity as well to read, from over a hundred
3 people, all have a similar theme about them, about
4 how they articulate their thoughts of Marty, caring,
5 compassionate, loving human being, as you recall in
6 some of those letters. They all say the same.

7 These aren't letters just from family
8 members or friends. we have letters from neighbors.
9 Neighbors like we have, where we see a young child
10 growing up before our eyes, our neighbors. You have
11 letters from them, neighbors who have known martin
12 since he was a baby, as he grew through high school.

13 You have letters from teachers, elementary
14 teachers that still recall having martin in their
15 classrooms. we have letters from college professors,
16 one in particular who starts out her letter, if you
17 may recall, saying it is remarkable that I can even
18 recall a student given the nature of the university
19 of Mississippi where there's four hundred people in a
20 classroom. That says something. That means
21 something. It's who this person is.

22 It's the moment, it was a defining moment,
23 but it doesn't define him.

24 we have letters from attorneys who were
25 either fathers of friends of his, assistant district

People v. Heidgen

1 attorneys who lived on his block and watched him
2 grow, who actually represented, as defense attorneys,
3 and prosecuted cases like this, as we all have,
4 members of the clergy, co-workers, employers, the
5 whole gamut of all of the people that you as a person
6 living in this world would come into contact with.

7 All of them submitted letters, letters from
8 all around the country, on behalf of martin. They
9 didn't have to do that. They are not family members.
10 They are college professors, teachers, neighbors, but
11 they did.

12 They bestirred themselves to put pen to
13 paper on behalf of somebody they may not have seen in
14 the last three or four years, or, in some cases, in
15 seven or eight years, but they remembered him from
16 their classrooms and they wrote that letter. That
17 says something.

18 How many 23 years olds, at the time this
19 accident occurred, would have been able to have one
20 hundred people from all walks of life, at such a
21 young age, to influence that many people, to write
22 letters on his behalf? I don't know how many people
23 who are sixty who have met that many people in their
24 lives who would be able to have a hundred people
25 write in on behalf of them.

People v. Heidgen

1 The people who have spoken of martin and of
2 his character today have never met him. They don't
3 know him. I urge you, Judge, listen to what has been
4 said by people who know him as to who the person is
5 that stands before you.

6 Now, many times defendants stand before you
7 with terrible criminal records, terrible backgrounds.
8 In fact, the legislature actually penalizes, under
9 certain circumstances, for a prior conviction, as a
10 predicate to have you make -- to make you serve more
11 of a sentence. so a bad character, a bad past, a bad
12 background enures to the detriment of a defendant who
13 stands before you ready to be sentenced.

14 So too -- so too must a person's good
15 background, good character, the manner in which he
16 lived in a positive way, it has to have some positive
17 influence in arriving at what a just sentence would
18 be.

19 Now, it is not my position today to
20 relitigate any of the facts of this case. The trial,
21 we went through that. There is a verdict. At this
22 point, Mr. Heidgen is convicted of murder and your
23 Honor is going to sentence him today on that charge.

24 The purpose here, your Honor, is the
25 obvious. I am going to articulate truthfully -- not

People v. Heidgen

1 based upon what I am saying, I'm his advocate here,
2 I'm his attorney, don't take my word for his
3 character, take the word of the hundreds of letters
4 from the people who put pen to paper to try to
5 explain to you, who now has this awesome
6 responsibility now of sentencing somebody.

7 Somebody said earlier this morning that
8 justice is blind and that is true. Justice is that
9 elusive quality that we try to balance the needs of
10 all competing interests out of society, out of the
11 aggrieved parties, the victims and the pain they
12 receive, as well as where does this person fit in, in
13 the context of all others that come before you.

14 unfortunately, as we heard from Marty's mom
15 at length, terrible DWI related homicide,
16 manslaughters or murders, are not treated
17 consistently within our system. Justice, in our
18 criminal justice system, has to have consistency that
19 all people are treated equally who are similarly
20 situated who have committed the same crime, should be
21 treated similarly.

22 Now, martin's mom mentioned the Karen Fisher
23 case and, for obvious reasons, in that case that
24 person received a sentence of three and a half to ten
25 years -- or she hasn't been sentenced yet. That was

People v. Heidgen

1 the plea agreement. But what was most important or
2 significant to me when I read that was it said, Karen
3 Fisher meekly standing *in* a large courtroom empty but
4 for her estranged husband, empty.

5 This courtroom has never been empty. Even
6 when we needed to do an adjournment, it was never
7 empty. What does that say now with respect to cases
8 that have this cavalcade of media attention on it?
9 Do people in the spotlight in a high profile case,
10 defendants, get treated more harshly than in a quiet
11 courtroom? I suspect not. It can't be. We can't
12 believe that that could happen in our experiences but
13 there is some imbalance in what's happening.

14 High profile cases like the Staten Island
15 Ferry, yes, ten, twelve people were killed by a
16 person who was in the position and the job to ferry
17 people to work, and besides the ten or twelve people
18 that died, people were maimed, amputations and the
19 like. He wasn't charged with murder. I think he did
20 a year.

21 Joseph Grant, a New York city police officer
22 killed a family of four and a police officer;
23 manslaughter, five to fifteen. Two to six, time
24 served and probation, Christina Page (phonetic).

25 I don't know what that means necessarily.

People v. Heidgen

what I do know is that justice needs to be aligned.

2 People who commit similar acts with similar results,
.3 regardless of the attention given, cannot be held to
4 a higher standard than others.

5 People who commit a DWI related homicide of
6 a non-US citizen who has no family at all in the
7 united States can't get a better sentence by virtue
8 of that than somebody who commits the same crime with
9 the same result to a US citizen who has victim's
10 rights and MADD and family members saying we want
11 more time. It can't be that way.

12 we can't value the lives of people. That
13 one person's life is not worth more than another
14 person's life.

15 The pain is all the same. I can't imagine
16 what the Flynns and the Tangneys and the Rabinowitzes
17 went through. I can only empathize but I can never
18 imagine.

19 Judge, the legislature gives you the
20 discretion on murder cases to sentencing a defendant
21 from 15 years to life to a maximum of 25 to life.
22 That is a ten-year window, almost double, difference
23 between the minimum and maximum, same crime, murder.
24 They are all murder. who gets the 25 to life? The
25 worst, heinous, intentional murderer. some murderers

People v. Heidgen

1 get 15, it's still a murder.

2 so who fits in the 15, if we know what the
3 25 to life murderer is? what murderer or what
4 conviction for murder gets 15? Certainly an
5 unintentional murder, certainly somebody who has a
6 past that devoted his entire life to helping others.

7 This was a defining moment in his life. It
8 does not define who stands before you. His deeds,
9 the manner in which he lived his life, defines who he
10 is, how he lived his life.

11 In light -- I have asked myself, learning
12 about his background, how can somebody who in so few
13 years of life have given so much of himself to
14 volunteer work, to charity work, to working with
15 children and positively influenced so many people at
16 such a young age, yet, in one moment, so negatively
17 and tragically affect others, and that's the
18 conundrum here.

19 People say that Marty is not remorseful. we
20 heard that from various speakers today. we heard
21 that from the prosecution table. There's no book
22 about how somebody is supposed to react under stress
23 or under extreme circumstances. There's times people
24 are crying at a table, and they say, oh, that's
25 crocodile tears, that's not good. Sometimes people

People v. Heidgen

1 don't say anything. well, he's not paying attention.
2 He doesn't care. Some people are smiling because
3 they are nervous. oh, well, he thinks this is a
4 joke.

5 we can't look at somebody, especially a 23
6 to now 25 year old, in the eye of this hurricane
7 where he is sitting charged with murder looking at
8 life in prison, and say, well, *I* am going to look at
9 him and *I* am going to ask him -- *I*'m going to say to
10 myself is he showing remorse.

11 He can't speak during the pendency of a
12 criminal trial. we all know that. He can't get up
13 and give an interview for all these people and say *I*
14 am remorseful, *I* am so sorry. The few times he did,
15 he was told not to say anything, by myself,
16 certainly, and by various courts along the way. He's
17 a criminal defendant. He can't speak during the
18 pendency.

19 *I* have spoken to him. *I* can tell you -- at
20 least this *I* can tell you, is that he has always
21 expressed remorse to me. He has always wanted to
22 accept responsibility for this.

23 The defense in this case was not to excuse
24 his actions. The defense in this case was defending
25 the charge of murder, the unusual charge of murder,

People v. Heidgen

1 not unprecedented, but unusual, unprecedented here,
2 certainly. That is what it was.

3 An individual who is convicted of
4 manslaughter who has a .28 reading and kills another
5 because of that drunk driving, the maximum sentence
6 would be five to fifteen. That same act as a murder
7 for the depraved indifference jumped the sentence
8 from 15 to 25 to life. The minimum sentence on the
9 murder charge for the same conduct and result is
10 three times the maximum of the manslaughter, three
11 times by virtue of that, from five to 15 to 15 to
12 life.

13 certainly, Judge, I urge you that that three
14 times the sentence of other similarly situated cases,
15 whether it's a prosecuting attorney's decision in
16 county to county to county -- that's another thing
17 that maybe the legislature needs to deal with at some
18 point. But there's such discretion now with using
19 this depraved indifference, which the court of
20 appeals is still grappling with what it really means,
21 but if it can be used so indiscriminately from county
22 to county to county, the same acts, three times the
23 maximum sentence of the traditional charge of
24 manslaughter is certainly a severe enough penalty,
25 upgraded penalty, from what other people may be

People v. Heidgen

1 charged with and convicted of.

2 THE COURT: Mr. LaMagna, forgive me. My
3 court reporters have been working for an hour and a
4 half now. I am not curtailing you in any way, if you
5 intend to finish.

6 MR. LAMAGNA: Three minutes?

7 THE COURT: okay. Go ahead.

8 MR. LAMAGNA: Judge., I urge you to consider
9 the truth, the manner in which he lived his life
10 before this. None of us in this courtroom, including
11 your Honor, knows him. Those hundred people know him
12 and that should speak volumes. It should, at
13 least -- it certainly is relevant to the man who
14 stands before you, and 15 to life, given these
15 circumstances, I believe, is just.

16 Judge, there is one letter, and I will
17 conclude, that I submitted by an attorney who was
18 Martin's friend's dad who I think encapsulates pretty
19 much what I wanted to say, so if I may conclude with
20 that:

21 As an adult who has known martin Heidgen for
22 most of his life and seen him grow up literally in
23 front of my eyes, I want to express to you my
24 observations in regards to the question of who is
25 Marty Heidgen.

People v. Heidgen

1 I'm not going to read the whole letter.

2 Marty has always been a well rounded
3 all-American boy, much as my son, Joseph, and the
4 sons of most average American families you can
5 imagine. He has always been fun loving, outgoing,
6 witty and a pleasure to be around. My wife and I
7 have always found Marty to be respectful and well
8 mannered. I have never known him to exhibit any
9 unduly aggressive or hostile behavior. He is truly
10 your typical American boy.

11 He and Joseph can sit for hours talking
12 about sports and their plans for the future. Marty
13 has always expressed a desire to pursue a meaningful
14 career and his goal is to attend law school. He and
15 Joe were both in the marine Corp., ROTC at catholic
16 high school and Marty was on the soccer team.

17 I often saw Marty at the Little Rock
18 Athletic club when I went there to work out and he
19 was employed there in the area where adults left
20 their children to play while they worked. He seems
21 to have a real rapport with the kids.

22 I am not trying to say that Marty is a
23 perfect person, none of us are. what I am saying is
24 that Marty is like most other young -- like most any
25 other young person who you would be proud to call

People v. Heidgen

1 your son.

2 From years of knowing Marty and observing
3 his behavior and character, I know that he would not
4 intentionally bring harm to anyone and that the
5 accident in New York would leave him unbelievably
6 distraught and anguished for the families involved,
including his own.

8 Marty is not a bad person. Marty is a good
9 person. He is the same good person today that he was
10 the date of the incident. He made a mistake which
11 unfortunately resulted in terrible consequences.
12 Many of us have sons and daughters who have made
13 similar mistakes. But for the grace of God, we could
14 have been sitting in the position that Marty is
15 today.

16 I don't write this letter to excuse Marty's
17 actions or to minimize the consequences of his
18 actions which leave us all grief stricken for the
19 families involved. Rather, I am writing to let you
20 know that Marty is, like most of us, a caring, well
21 intentioned, level human being and not a monster,
22 which, by human nature is a reflective conclusion
23 others understandably might jump to given the
24 magnitude of this tragedy.

25 I think that says it.

People v. Heidgen

1 The only thing, Judge, that I will leave you
2 with, that I do disagree with, unfortunately, like.
3 everybody else who is involved in this trial, Marty
4 is not the same person he was before this accident,
5 just like many of us, certainly the Flynn family, the
6 Rabinowitz family and the Tangney family. The person
7 you observed under the stress of this cavalcade of
8 media is not the same 23 year old kid that's in those
9 letters.

10 I would ask you to bear that in mind in
11 arriving at any just sentence and I trust and I have
12 all the confidence that you will. Thank you, Judge.

13 THE COURT: Thank you, Mr. LaMagna.

14 we'll take a ten minute break.

15 (whereupon, a brief recess was taken.)

16 MR. MARTELLO: Your Honor, may I proceed?

17 THE COURT: Yes, please.

18 MR. MARTELLO: Your Honor, first of all
19 thank you very much for affording me the opportunity
20 to address the Court. I know the time is late and I
21 am going to reduce my prepared remarks accordingly.
22 I know a lot has been said here, Judge.

23 Judge, you heard from a lot of people here
24 today and you heard a lot of opinions about who Marty
25 is, what he's done and how he should be punished.

People v. Heidgen

1 The great thing about this country is that everyone
2 does have a right to an opinion and a right for their
3 opinion to be heard. It was a vital part of this
4 process in this sentencing hearing for you to hear
5 all these opinions.

6 Likewise, Judge, another great thing about
7 this country is that the law protects an individual
8 sitting in a courtroom from opinions. The law is
9 above those opinions. The law treats everyone
10 equally and does not allow itself to be pressured by
11 the opinion of the public or the government or even
12 the media.

13 This courtroom, Judge, is the one safe haven
14 for Marty Heidgen to be viewed fairly as to what he
15 did and only what he did, regardless of what the
16 public opinion is.

17 Judge, as you know, public opinion can. cut
18 both ways. There have been cases where the public is
19 more lenient toward the defendant and they come here
20 to Court to ask for a less harsh sentence for a
21 defendant that is similarly situated. Then there are
22 times when the public opinion feels that the
23 defendant should be more harshly treated.

24 In both instances, the public opinion is not
25 really the relevant thing here. The law is what must

People v. Heidgen

1 control. In our country the law guarantees that
2 every citizen will be consistently judged as all
3 other citizens in a similar situation are judged.

4 Judge, I don't have to remind this court,
5 because I know what type of judge you are, that you
6 are above the fray of public opinion, and only
7 because the court is above that fray of public
8 opinion can Marty be judged just for what he did.

9 Now, you know, Judge, when Mr. LaMagna and I
10 took this case, we knew it was a very unpopular case.
11 You know, we understood from the very beginning who
12 the victims are. It's clearly the Tangney,
13 Rabinowitz and Flynn families. we are never saying
14 that Marty here is a victim, but even a person
15 accused of what he has been accused of deserves a
16 defense.

17 Though our heart goes out to the families,
18 we have to keep asking yourselves, just like
19 Miss Tangney asked, why has this case received so
20 much attention.

21 Mr. LaMagna alluded to the fact of the
22 Staten Island Ferry case, the case of Karen Fisher
23 where a priest was killed. In all those instances,
24 families were destroyed, but yet there has not been
25 this focus on those cases to have a certain result.

People v. Heidgen

1 The district attorneys in those cases have made much
2 less recommendations in their sentence, and, like,
3 Miss Tangney, we had to ask the question why, what
4 was it about this case.

5 It's almost as if the collective anger of
6 all of society over the last 30 years, of all the
7 senseless tragedies on the roads that have occurred
8 at the hands of drunk drivers, have been visited on
9 Marty Heidgen. It's almost as if he has become a
10 flash point, a poster child, if you will, for all the
11 sins of other drunk drivers of the last 30-plus
12 years. He has almost become a poster child of what's
13 wrong with the laws today and, frankly, Judge, that's
14 wrong.

15 As you know, Judge, he's not supposed to pay
16 for what's happened 30 years ago. He's only supposed
17 to pay for what he did and for who he is. If the
18 laws are to be changed, there's another venue for
19 that. Here, as we sit here today, we are judging
20 Marty Heidgen just for his acts on July 2nd, 2005,
21. and not for all that has gone on on the streets and
22 on the highways over the 30-plus years.

23 Now, Judge, you know -- and again -- I know
24 I am pressed for time.

25 THE COURT: You're not pressed for time.

People N. Heidgen

1 MR. MARTELLO: All right. Thank you, Judge.

2 Judge, I want to tell you, and I'm not
3 pandering to you by saying this, but I've gotten to
4 know you quite well over the last couple of months
5 and I know your representation and, again, please
6 don't accept this as pandering, but you are a good
7 man. You're a moral man. I see it in your actions
8 and in your words. I haven't always agreed with your
9 rulings here in court, but I always knew whatever
10 your rulings were, they were from the heart and they
11 were what you believed to be right.

12 Sometimes justice, an act of justice,
13 requires us to do unpopular things, and you have
14 ruled and made unpopular rulings just simply because
15 they were right.

16 I am going to ask you today to make what may
17 be an unpopular ruling, but as I alluded to you
18 before, we, as the guardians of the law, chiefly you,
19 Judge, we have to be above the fray of what the
20 public may want, whether they want a harsher sentence
21 or lighter sentence.

22 Now, I'm not asking you, Judge, to affix a
23 sentence to Marty because it's what I want or what
24 the families want or the government or the media. I
25 am asking you because it's right. If the truth be

People v. Heidgen

1 told, Marty's family, if they were to have their way,
2 if they were to get what they really they want, they
3 would ask you to return Marty to the bosom of their
4 home, to the safety of their home. That would be
5 their opinion because they are his parents.

6 But that opinion isn't necessarily right. I
7 understand it, but it's not necessarily right. He
8 must be punished for what he did, but that's an
9 opinion that the courts must be above, that fray.

10 Likewise, the victims' families, they are
11 completely justified in their feelings, but there is
12 no measure of punishment that could be exacted here
13 in this courtroom today that would be sufficient for
14 the victims' families. Now, that's their opinion.
15 Again, just because it's their opinions does not make
16 it right.

17 Lastly, I come to the district attorney.
18 Now, the government is asking -- making a
19 recommendation of 25 years to life. Again, that's
20 their opinion, and they have a right to it, to that
21 recommendation. But just because it's their opinion,
22 again, does not make it right. I need you, Judge, to
23 see through that.

24 The district attorney is, as you know, is a
25 very important arm of the government. They are the

People v. Heidgen

1 prosecuting arm of the government. By virtue of the
2 social conduct we have here in society, we entrust in
3 the DA's office to employ the proper discretion in
4 making recommendations upon a defendant.

5 we, as citizens of this county, put our
6 lives in the hands of the DA by asking them to use
7 their discretion when we, as citizens, do something
8 wrong. When we do something wrong, we ask the DA,
9 judge us fairly, to use your discretion.

10 I submit to you here, Judge, that the
11 district attorney's recommendation is inappropriate.
12 I believe that they did not properly use their
13 discretion here.

14 They -- and I understand the DA has to speak
15 for the victim, but they too must use their
16 discretion and be able to distinguish between the
17 actions of one defendant versus the actions of
18 another defendant.

19 The DA has asked for 25 years to life,
20 Judge. That is the maximum sentence allowable in New
21 York state, the maximum. Now, it seems to me that
22 the maximum sentence should be reserved just for the
23 most heinous members of our society, the most evil,
24 because you can't give any greater of a sentence.

25 so when they recommend to you, your Honor,

People v. Heidgen

1 25 years to life for this 25 year old young man, who
2 has this terrible tragedy, but we must keep in mind
3 it was borne from drinking, from a terrible mistake
4 in judgment, they are asking for 25 years to life for
5 him.

6 I asked the district attorney in a
7 rhetorical sense, what would be reserved, what would
8 they ask for in the most heinous, the most evil in
9 society.

10 Clearly, despite the terrible, terrible
11 tragedy that has occurred here because of Marty's
12 actions, I don't believe anyone in this courtroom
13 could possibly say he is the most evil we have in
14 society, that he is the most heinous we have in
15 society.

16 Suppose there was a contract killer here
17 before this court and the district attorney had to
18 make a recommendation, a contract killer accused of
19 putting a gun to somebody's head and being paid a
20 hundred thousand dollars to do it, more evil, more
21 heinous than that.

22 A gang member that slit someone's throat
23 just because that's the initiation right to get into
24 the gang. That person -- could you get any more
25 depraved than that, any more evil.

People v. Heidgen

1 The rapist and the murderer, or the mugger
2 that lies in wait in an alleyway, doesn't know how
3 much money you have in your pocket. You could have a
4 couple hundred dollars or \$10,000, but he will kill
5 you just the same for that money in your wallet, any
6 more depraved than that person.

7 But yet, the only recommendation, the only
8 sentence that could be given to those most heinous,
9 evil people is 25 years to life. I suggest to you,
10 judge, that it is the obligation of us, as officers
11 of the court, to do our best to use our discretion,
12 to distinguish between those most evil and those that
13 have done a terrible thing, nonetheless, and must be
14 punished.

15 Don't mistake what I am saying, Judge. I
16 know Marty must be punished and he must be punished
17 significantly. A terrible tragedy has occurred as a
18 result of his actions. But, regardless of how
19 terrible this tragedy is, there have been people in
20 our society that are so -- that are evil and purely
21 heinous, that that maximum charge should be reserved
22 for.

23 Judge, as I said -- and I disagree with the
24 DA's recommendation but, fortunately, in this
25 country, they are not the last word. You are the

People v. Heidgen

1 last word, Judge. You know, both physically and
2 symbolically, you sit higher than everyone here, and
3 there is a very good reason for that, Judge, because
4 you are empowered with the very tough job to be wiser
5 than all of us, to not give sway to public opinion,
6 to not give sway to, let's say, an over reaching
7 government. You are the final arbiter here in this
8 sanctuary here, Judge. You are the last resort.

9 Judge, I know -- I know you want to send a
10 message here, Judge, and you absolutely should. But
11 I'm just going to ask you, Judge, to send the right
12 message. Don't send the message that he should be
13 punished because of the collectively anger of all the
14 sins and tragedies that have happened on the road at
15 the hands of drunk drivers over the last 30 years.
16 Don't sentence him to that as the public seems to
17 want.

18 Don't sentence him by grouping him with the
19 most heinous criminals, the most evil members of
20 society, as the government wants you to group him in.
21 Do not put him in with those people. Don't sentence
22 him consistent with that.

23 Those are the wrong messages, Judge. I
24 think the message that this court should send is that
25 driving while intoxicated in this county, or anywhere

People v. Heidgen

1 in this state, will not be tolerated, and, if you do
2 so, you are going to be punished and you are going to
3 be punished severely, but you're going to be punished
4 justly, consistent with other citizens in our society
5 similarly situated regardless of what the rest of the
6 public wants.

7 You're going to be punished as a person that
8 has done a terrible thing as a result of drinking,
9 but you're not going to be punished consistent with
10 the Jeffrey Dahmers of the world or the collin
11 Fergusons of the world. You're not going to be
12 judged as harshly as those most evil people in our
13 society.

14 The maximum punishment must be reserved for
15 those people, and, if it is not, then we are watering
16 down the punishment we give to those most evil people
17 in society, if we can give it to this young man here
18 today.

19 Judge, I told you I would try to be brief.
20 I think I have accomplished that, but I would like to
21 leave you with this, Judge.

22 You know, this courtroom doesn't guarantee
23 that justice is going to happen here today. There's
24 no guarantees. These four walls, all it guarantees
25 is that we have a chance to have justice here today.

People v. Heidgen

1 You have heard from so many people, now
2 including myself, and I suspect the person you most
3 want to hear from is Marty himself. But, Judge, you
4 have heard from so many people, and you have heard so
5 many opinions, please listen to that one concept of
6 justice. That, to me, is the overriding concern
7 here, not to let him off the hook. He must be
8 punished significantly but he must be distinguished
9 from the most evil in society. Please, allow this
10 courtroom to have a chance for justice to happen.

11 I want to thank you, Judge, for allowing me
12 to address you. It's been a pleasure to serve with
13 you in your courtroom. I know now Marty wants to
14 speak to you, and, with your permission, he would
15 like to address the court.

16 THE COURT: Thank you.

17 THE DEFENDANT: Good afternoon. There is
18 really no easy way to begin this. I haven't had the
19 opportunity to address all involved until now. I
20 have been anxious though to say how I felt since the
21 beginning but I couldn't because of the
22 circumstances. I have wanted to take responsibility
23 for this, Judge, from the moment this happened.

24 It has been difficult to find words that
25 express how I truly feel. Nevertheless, I am going

People v. Heidgen

1 to speak to everyone today from both my mind and my
2 heart.

3 First and foremost, I am very sorry. I am
4 very sorry every day, every hour and every minute,
5 for the deaths of Katie Flynn and Stanley Rabinowitz
6 and for the physical and emotional pain that you have
7 suffered and will continue to suffer.

8 Even though words do not fully express the
9 sorrow and emptiness that I feel now, nor can I
10 imagine that I will always feel, your anger towards
11 me is justified and understandable. I am most angry
12 at myself, fudge.

13 I can also understand that you all are never
14 going to forgive me. I am mean, nor did I intend for
15 this to happen. I was just trying to go home. The
16 reason this accident happened was because of my
17 foolish and selfish decision to drink and drive.
18 That is why this terrible accident happened and that
19 is why good people died and good people were hurt.
20 It was my responsibility to put-down my keys, that
21 night. That is the biggest failure of my :life so
22 far.

23 I also want to take this opportunity to
24 address other young people in this community about
25 drinking and driving and irresponsible social

People v. Heidgen

1 drinking. If you respect yourself and love others,
2 do not drink and drive. It is deadly. Please, take
3 it from me, all of us in this courtroom have lost
4 because of my decision to drink and drive. Don't
5 think that something like this can't happen to you.
6 All of us here are proof that it can.

7 In. my opinion, blood alcohol limits should
8 be 0.0 to properly reflect society's view on drinking
9 and driving. That way there's no ambiguity or
10 excuses. There are no opportunities to bend the
11 rules.

12 I am also, fudge, a good person with warm
13 feelings and compassion. I have shown that
14 throughout my life by my actions. I have spent
15 thousands of hours in my teenage and adult life
16 working with children and needy members of the
17 community. I have been a coach, a role model and a
18 mentor for kids. I feel like I have let all those
19 people down.

20 That time has been the most rewarding and
21 special in my life. Being a part of building a
22 child's self esteem and character is truly special.
23 Empowering a child is an amazing skill that I have
24 been blessed with and kids have changed for me in
25 miraculous ways. They have taught me to never judge,

People v Heidgen

1 to love and to listen. Their viewpoint is not
2 politicized or polluted. They have a natural
3 unconscious bias towards good. I am sure Katie was
4 just like that.

5 I also have respect and admiration for the
6 older citizens of society. My grandparents have
7 taught me wisdom, compassion and a lot of love.
8 These things are what makes the death of Stanley so
9' hard for me to take. I would never harm a child or a
10 man like him.

11 I hope that this court will give me the
12 opportunity to grow after this experience and allow
13 me to aid in the growth of the community.

14 I also want to say I am sorry to the good
15 people of Long Island who welcomed me with open and
16 loving arms when I moved here eight months before
17 this accident. I betrayed the trust that you gave
18 me.

19 This foolish and unintentional act does not
20 define who I am and I ask the court and everyone here
21 not to confuse the tragic events of July 2nd, 2005,
22 with who I am. I am not a depraved person or a
23 monster, nor have I ever been at any moment in my
24 life. I am just a normal, kind and caring guy who
25 had a great life before this accident.

People v. Heidgen

1 I am not saying good people should get a
2 free pass when they break the law. I think their
3 whole lives should be considered.

4 I understand, Judge, the anger you must feel
5 by listening to the events of that night and the
6 testimony in this trial. Just know that I have
7 already begun a life sentence of anguish, grief and
8 heartache long before this sentence.

9 I have also heard the accounts that say I
10 show no remorse. For people to write that I am
11 unremorseful is very shocking to me. All I have is
12 remorse, not for me, but for the souls of the
13 deceased. My demeanor is a result of the shock of
14 the events transpiring around me which still to this
15 day seem very surreal. It is also a sign of my
16 belief in God's plan. It's a comfort I have my
17 parents and family. I have put my full faith in God
18 that this is His plan.

19 Once again, I want to say again how very
20 sorry I am. I will always live with this. I am a
21 person of faith and I pray that God gives you all the
22 strength to deal, as much as possible, from all of
23 this.

24 Now I want to offer Katie, Stanley, the
25 Flynns, the Rabinowitzes, the Tangneys and you,

People v. Heidgen

1 Judge, my greatest gift, as defined in my life, the
2 gift of love. Love defines who I am. Thank you,
3 judge.

4 THE COURT: I am going to take a two-minute
5 break to give the family an opportunity to come back
6 in before I discuss the sentence.

7 (whereupon, a brief recess was taken.)

8 THE CLERK: will the defendant, please,
9 rise?

10 THE COURT: Mr. Heidgen, you have been
11 present all day and heard how you have affected lives
12 of those who have lived to experience and endure the
13 pain that you have caused. Any attempt that I would
14 make to discuss the enormity of their loss, both in
15 terms of the lives lost due to your actions or the
16 pain they endure on a daily basis, both physical and
17 emotional, would pale in comparison to the heartbreak
18 in the expressions that we have just heard.

19 As a judge of this court for the past ten
20 years, it has been my duty to sentence many
21 individuals who have intentionally taken lives from
22 innocent people. But I have rarely been in a
23 position to sentence one who has taken lives and
24 affected so many because of pure blatant, callous and
25 wanton disregard for the consequences of his actions

People v. Heidgen

1 and their affect on innocent victims.

2 while your pleas may sound genuine, you will
3 remember that I have been privy to letters and phone
4 calls made by you while in the Nassau county
Correctional Center. The letters and phone calls
6 speak volumes about who you are and where your true
7 sympathies lie.

8 I was also privy to your attempt to falsify
9 the DNA results ordered by this Court during your
10 trial. That conduct speaks volumes about the callous
11 disregard and contempt with which you view authority,
12 law and the necessity for you to adhere to the rules
13 of our society.

14 However, I will not punish you now for that
15 act. That charge will have to be brought and proven
16 beyond a reasonable doubt, like any allegation of a
17 criminal nature. My sentence here today reflects
18 only the sanction I believe you deserve for the
19 charges of which you have been convicted.

20 The pleas of your attorneys, your family and
21 .yourself do not fall on totally deaf ears. I know
22 that it is true that you didn't intend to take the
23 lives of Stanley Rabinowitz or Katie Flynn and, while
24 you didn't intend to cause devastating injuries to
25 the Tangneys and the Flynns, through the course of

People v. Heidgen

1 the evidence presented, I am also aware that, unlike
2 so many other defendants this court has sentenced,
3 you have no prior criminal convictions.

4 However, it is also abundantly clear that
5 you were aware of the risks that you took, both with
6 respect to yourself and anyone unfortunate enough to
7 cross your path on the night of July 2nd, 2005, and
8 you consciously chose to disregard those risks. That
disregard goes to a level of culpability consistent
10 with those who intentionally take a life. This is
11 why I will sentence you to a term whereby you may
12 well spend the rest of your life in prison.

13 Before I do, I can only express this court's
14 heartfelt condolences to the families that your
15 actions have so deeply affected, the Rabinowitzes,
16 the Flynns, the Tangneys, and your own family who had
17 hoped so much for your life to take a different path.

18 The record should reflect I have before me a
19 presentence report prepared by the probation
20 department, reviewed by counsel, to which both sides
21 have expressed their comments.

22 It is the judgment of this Court that for
23 the crime of murder in the second degree, two counts
24 thereof, each a class A1 felony for which you stand
25 convicted under counts one and two of

People v. Heidgen

1 Indictment 1910N-05, you, martin Heidgen, are hereby
2 sentenced to two indeterminate terms of imprisonment
3 each of which will have a range -- will have a
4 maximum of life and a minimum of eighteen years

5 It is the further judgment of this court
6 that for the crimes of assault in the first degree,
7 three counts thereof, each a class B violent felony
8 for which you also stand convicted under counts
9 three, four and five of Indictment 1910N-05, you,
10 Martin Heidgen, are also sentenced to three
11 indeterminate terms of imprisonment, each for
12 eighteen years, with five years of post-release
13 supervision.

14 It is the further judgement of this court,
15 for the crime of driving while intoxicated, two
16 counts thereof, each an unclassified misdemeanor for
17 which you also stand convicted under counts eight and
18 nine of Indictment 1910N-05, you, martin Heidgen, are
19 hereby sentenced to two definite terms of
20 imprisonment of 180 days and a fine of \$1,500.

21 In addition, your New York state driver's
22 license or privileges to operate a motor vehicle in
23 the state of New York are revoked for six months.

24 All of the terms of imprisonment just
25 imposed will run concurrently.

People v. Heidgen

Are there orders of protection here?

MS. MCCORMICK: There are not.

THE COURT: In addition, it is directed that a DNA sample be taken. You are directed to pay restitution in the amount of \$4,052 by civil judgment. You are also assessed a mandatory surcharge of \$250, DNA fee of \$50, DWI surcharge of \$25 and a crime victim assistance fee of \$20, all payable by civil judgment.

it is further ordered that you are committed to the New York state Department of corrections at Fishkill, New York, to be dealt with there according to law.

Certified to be a true and accurate transcript.

/s/ --2.1.1

BUFF BRAN'SON , RPR
Senior Court Reporter